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 PRO-SE

FILED

DEC 22 2025

CLERK, U.S. DISTRICT COURT  
NORTH DISTRICT OF CALIFORNIA

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UNITED STATES COURT OF APPEALS  
 FOR THE NINTH CIRCUIT

Michael Landon Luckert  
 Plaintiff,

Case No. 19-cv-08204-PJH

V.

Motion to APPEAL  
AS OF Right

San Francisco Police Dept.  
 AND officer's: O. Smith #  
 2275, LENA #56, Gutierrez  
 #1928, Brule #2005, Espiritu  
 #1952, Mendoza #2324,  
 Mercado #1982, ANTHONY P.  
 Ochoa.

F.R.A.P Rule 3

Defendant's

(1). The Plaintiff is a Pro-se attorney representing on behalf of himself. And According to the Federal Rule of Appellate Procedure For a Notice of APPEAL (F.R.A.P) Rule (3)(c)(2): A pro-se notice of appeal is considered Filed on behalf of the signer and the signer's spouse and minor children (if they are

Motion to appeal as of Right / case No. 19-cv-08204-PJH

Page 1 of 14

parties), unless the notice clearly indicates otherwise.

(2) The Plaintiff in case 19-CV-08204-PJH has never received notice from the courts about a appeal.

(3) F.R.A.P Rule (4)(a)(7)(A)(ii), Federal Rule of Civil Procedure 58(a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, OR

- 150 days have run from entry of the judgment or order in the civil docket, under Federal Rule of Civil Procedure 79(a).

(4) In this case 19-CV-08204-PJH the appellate court will see in the Forgoing exhibit that this is a separate ORDER,

(A) 150 days has not yet passed from Time of Filing of Document 182, Filed 07/25/25, Page 1 of 1, OF ORDER OVERRULING OBJECTIONS to the Filing date of \_\_\_\_\_

For a MOTION TO APPEAL (as of right).

(1). (EXHIBIT, A), ORDER OVERRULING OBJECTIONS, which shows a Filed date of:

07-25-25. Which means that for a pro-se litigant

the plaintiff still has time to file appeal (for Justice Motion to appeal as of right / case No. 19-CV-08204-PJH

parties), unless the notice clearly indicates otherwise.

(2) The Plaintiff in case 19-cv-08204-PJH has never received notice from the courts about a appeal.

(3) F.R.A.P Rule (4)(a)(7)(A)(ii), Federal Rule of Civil Procedure 58(a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, OR

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(4) In this case 19-cv-08204-PJH the appellate court will see in the forgoing exhibit that this is a separate ORDER,

(A) 150 days has not yet passed from time of filing of Document 182, Filed 07/25/25, Page 1 of 1, OF ORDER OVERRULING OBJECTIONS to the filing date of \_\_\_\_\_

for a MOTION TO APPEAL (as of right).

(1). (EXHIBIT, A), ORDER OVERRULING OBJECTIONS, which shows a filed date of: 07-25-25. Which means that for a pro-se litigant

the plaintiff still has time to file appeal for Justice Motion to appeal as of right / case no. 19-cv-08204-PJH

From (F.R.C.P) Rule (4)(a)(7)(A)(ii) that says that the Plaintiff has 150 days from last order.

## STATEMENT OF FACTS AND EVIDENTIARY LAWS AND DOCUMENTS

In the general guidelines it says that you must go by the (F.R.C.P) that were in place at the time of the incident. Unless it benefits the Plaintiff. Otherwise Corrupt Authority figures could mold the case into what they would want the outcome of a civil case to be.

(1). I, Michael Luckert, did get back from the defendant's Attorney during discovery a letter that said in:

(2). (EXHIBIT: B), Letter from defendant's attorney of Video Surveillance/body Cameras were erased or destroyed. AND disposed of on February 1, 2020. w/body surveillance video was disposed of months prior of February 1, 2020.

(2.A). So that means that if Plaintiff filed a Complaint of Excessive force in case No. 19-cv-08204-PJH on Date: December 17, 2019 the defendant's and their attorney know that this Video/Body Camera Surveillance should of been preserved. This means that from the time of incident on February 26, 2019 to February 1, 2020, the date of disposal, was under a year for preserving of the Video/Body camera surveillance.

[TITLE/CASE NO.] Motion to Appeal (as of Right) / 19-cv-08204-PJH



Please refer to the original copy of exhibit B that Michael Luckert submitted when Filing these documents to the United States District Court, Northern District of California. Because you can barely read exhibit B, I suspect because of fraud by the defence.

(3). (EXHIBIT, C) (F.R.C.P 37(e)), Failure to preserve electronically stored information. Electronically stored information that should have been preserved in anticipation or conduct of litigation is lost because a party failed to take responsible steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(1) Upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice: OR

(2) Only upon finding that the party acted with intent to deprive another party of the information's use in the litigation may:

(A). Presume that the lost information was unfavorable to the party;

(B). Instruct the jury that it may or must presume the information was unfavorable to the party; OR

(C). Dismiss the action or enter a default judgment.

## PLAINTIFF RESPONSE

[TITLE/CASE NO.] Motion to Appeal AS OF Right / case No. 19-CV-08204-PJH

(C). Since they did not preserve the Video/body Camera's Surveillance and destroyed them. The Plaintiff Filed a Default; Default Judgment for Failure to preserve electronically stored information is in (EXHIBIT-R), But instead of going by the preserving standard that Plaintiff wrote in (EXHIBIT-R), Default Judgment, in Summary Judgment. The United States District Court must go by California law to preserve and retain Video/body Camera Surveillance.

(1.A) The San Francisco County Police Department AND the Defence Broke Maliciously and Sadistically these two Rules F.R.C.P. 37(e)(2) Only Upon Finding that the party acted with the intent to deprive another party of the information's use in the litigation. AND

(1.B) F.R.C.P. 37(e), Failure to preserve Electronically stored information.

### (1.C) SUMMARY:

The United States District Court Must go by the Standards of State law when it comes to setting minimum standard for the length of time to preserve Video/body camera surveillance footage. Because the (F.R.C.P.) do not have any set minimum standard AND The Federal Government must have some kind of standard. California law in this case the United States District Court must match or surpass California laws on preserving Video/body camera surveillance footage. And Retaining Video/body Camera

1 surveillance footage.

2  
3 (#) (EXHIBIT D), Federal law governing Body  
4 Camera/video surveillance. In (exhibit. A) the Appeals  
5 court for the Federal laws and Policies of Body  
6 cameras/video surveillance will see that since  
7 there is no broad federal laws governing body  
8 camera video preservation for all law enforcement;  
9 however, some federal agencies have specific  
10 Policies, and a pending bill (H.R. 843) purposes a  
11 3 year minimum retention period for federal body  
12 camera footage in specific situations. Retention  
13 periods vary by state, with many state laws  
14 mandating longer storage for footage involving use  
15 of force, arrests or complaints.

16 (EXHIBIT D.I), State and local laws,  
17 re state-level regulations: most regulations on body  
18 camera video preservation are made at the state  
19 or local level, as states have their own specific  
20 laws.

## 21 CALIFORNIA LAW

22  
23  
24 (S) (EXHIBIT E), page 1, California, AB 69 (2015) rule  
25 for downloading and storing body-worn camera data.  
26 A minimum of two years in situations where force  
27 is used, an arrest is made, or where a complaint  
28 has been made against an officer agency. Storage

procedures should ensure evidentiary chains of custody are preserved, records of access and deletion of data are retained permanently and identify where body camera data should be stored.

~~ML (EXHIBIT E)~~ AB 1953 (2016), An agency may keep data for more than 60 days to have it available in case of a civilian complaint and to preserve transparency. Body camera data should be kept for two years if; it involves use of force by a peace officer or an officer-involved shooting, the recording is of an incident that leads to the detention or arrest of an individual; or the recording is relevant to a formal or informal complaint against a law enforcement officer or a (continued in EXHIBIT E) (page 2), law enforcement agency.

**(5). (EXHIBIT F)** preservation of body camera/video surveillance/Retention periods.

While records from significant events like use of force or arrests are kept for longer durations, sometimes for several years, to serve as evidence. It's crucial to retain records of access and deletion, ensure data ownership remains with the agency, and handle public access according to specific policies.

#### Retention periods

- Evidentiary Footage: Retained for a longer duration, often several years or indefinitely, particularly if it involves use of force, arrests, or a complaint.



(7) (EXHIBIT. G), California Code, Penal Code.  
PEN § 832.18.

(a) it is the intent of the Legislature to establish policies and procedures to address issues related to the downloading and storage data recorded by a body worn camera worn by a peace officer. These policies and procedures shall be based on best practices.

(8) (EXHIBIT. (G.1), Establish specific measures  
to prevent data tampering, deleting, and copying,  
including prohibiting the unauthorized use,  
duplication, or distribution of body-worn camera  
data.

(9) (EXHIBIT. H), Evidentiary data including  
video and audio recorded by a body-worn camera  
under this section should be retained for a  
minimum of two years under any of the following  
circumstances:

(I). The recording is of an incident involving the use of force by a peace officer or an officer involved shooting.

(II). The recording is of an incident that leads to the detention or arrest of an individual.

(III). The recording is relevant to a formal or informal complaint against a law enforcement officer or a law enforcement agency.

(10) (EXHIBIT. H.1), In determining a retention schedule,

1 the agency should work with its legal Counsel to determine  
 2 a retention schedule to ensure that storage policies and  
 3 practices are in compliance with all relevant laws and  
 4 adequately preserve evidentiary chains of custody.

5  
 6 (11). (EXHIBIT-H.2), Consulting with internal legal Counsel  
 7 to ensure the method of data storage meets legal  
 8 requirements for chain of custody concerns.

9  
 10 (12). (EXHIBIT-I), ORDER DENYING Plaintiff MOTION For  
 11 SUMMARY Judgment. Plaintiff responded with (EXHIBIT-J)

12  
 13 (13). (EXHIBIT-J), Objection to a ruling or order / Filed  
 14 March 19, 2025, Page's 1-11.

15  
 16 (a). To read the F.R.C.P RULE 37(e) Failure to preserve  
 17 electronically stored Information please Refer to  
 18 (EXHIBIT.C).

19  
 20 (b). The Plaintiff objected to the Judge Not holding  
 21 the Defendant's Counsel and San Francisco County  
 22 Jail Responsible for not preserving Video / body camera  
 23 Surveillance Footage. The Plaintiff covers this subject  
 24 in (EXHIBIT. B - H.2).

25  
 26 (c). Disposition Sheet of All charges dropped is in (EXHIBIT-L).

27 (d). ALL Other Objections to (Objection to a ruling or  
 28 order), are referenced. Please look them up.

## MEDICAL DOCUMENTATION

(14). (EXHIBIT-K), Valley Care Medical Pleasanton. The Plaintiff submitted to the U.S. District Court, NORTHERN DISTRICT of California of how Plaintiff's Injuries with Physical Therapy lasted 15/16 months after initial injury on February 26, 2019. The day of Plaintiff's False incarceration. Physical Therapy being one of the tops in Pain. Proof of the false incarceration is in (15) (EXHIBIT-L), DISPOSITION OF ALL CHARGES DROPPED, (in highlighted area). Please read all of these medical documents AND the appeals COURT will see that these injuries were,

(1). Not D-minimus because the swelling of the hands did not go down for 2 1/2 weeks. AND,

(2). The Plaintiff had to do physical Therapy FOR 15/16 month for injury to Fingers.

ML

## PLAINTIFF RESPONSE

(3). These officers of the Law maliciously and sadistically caused Plaintiff Injury by way of excessive force as shown in the MEDICAL

Documentation in EXHIBIT-K. And since they broke Motion to Appeal as of right / case NO. 19-CV-08204-PJH / page 10 of 14 EXHIBITS (K)(L)

1 The law by injuring Plaintiff HANDS AND Fingers  
 2 Maliciously and Sadistically Therefore losing  
 3 there immunity because they broke the law.

4  
 5 (17) (EXHIBIT-M) Notice to United States  
 6 Officers to be added as defendant's by Amendment  
 7 AND Amended Statement of Claim Complaint.

8 (1). These Document's in (Exhibit-M) is how the  
 9 Plaintiff wanted case 19-CV-08204-PJH to go to  
 10 Trial with all of these 8 defendant's on  
 11 Document 7, Filed 01/27/20, Pages 1-21. I asked  
 12 the Judge before trial to change it back to the  
 13 format of this EXHIBIT-M, But she would not  
 14 let me, AND I said that I had come across some  
 15 Initial's (BM) that toward the end of discovery  
 16 and in the interest of Justice that the

17 (18) (EXHIBIT-N) San Francisco Field Arrest Card  
 18 with the initials (BM) actually stand for  
 19 Brian Mendoza. I mean after all this  
 20 (San Francisco Field arrest Card) came  
 21 from Brian Mendoza Declaration. So where  
 22 is his printed Name or initials on this

23 (San Francisco Field Arrest Card) does it say Brian  
 24 Mendoza initials (BM) or officer Brian Mendoza name to  
 25 make this Declaration Officer Brian Mendoza!

26 (A) So With the initials (BM) the Plaintiff  
 27 also submitted a Document to get a  
 28 Court appointed Hand-writing Forensic Expert.



But it does not show up on the docket sheet. I do not know if the court clerk erased it or what. Please check on the Handwriting Forensic Expert document that I submitted.

(B). The San Francisco Field arrest card that Brian Mendoza sent in as his Declaration must have his name on it yet Brian Mendoza says no those are not his initials (PM). I highly doubt that. There is not a officer on this arrest card with the initials (BM) or (PM). So those initials must be Brian Mendoza #2324.

(19). (EXHIBIT-D), Notice of Motion For a New Trial explains what happened with the Declaration of Brian Mendoza and his initials (PM).

(20). (EXHIBIT-P), Motion For a New trial with Brian Mendoza #2324 as a Defendant in his Official and Individual Capacity. Explains what the Plaintiff wanted done with Brian Mendoza #2324. And Explains the excessive force.

(21). (EXHIBIT-Q), Opposition and Objections to Defendant Edward Gutierrez's EXPERT Disclosure.

In this opposition and objection to Defendant Edward Gutierrez Expert Disclosure (Document 176) (Filed: 12/16/24). The Plaintiff is aware that this

EXPERT Disclosure was mostly about using the charges that were dropped as a defence. Which is not right.

Please read all of my Objections to Defendant Edward  
motion to Appeal as of right / case NO. 19-CV-08204-PJH / page 12 of 14

Gutierrez EXPERT Disclosure. Because the  
 Plaintiff sustained injuries as documented  
 in the Medical documentation on 02/26/2019  
 in Exhibit K. As the Forgoing Documentation  
 explain's. For excessive Force charges against  
 these officers in Exhibit M. These injuries  
 are also consistant with handcuff injuries,  
 (22). (EXHIBIT R), Default; Default Judgment For  
Failure to Preserve Electronically Stored Information  
 (a). In this (EXHIBIT R) the plaintiff Filed it with  
 summary Judgment. But the only Difference Now is that  
 the plaintiff have state law to back me up in  
 (Exhibit's-D — H.2). These are California laws in which  
 the UNITED STATES DISTRICT COURT DO NOT have law's For  
 preserving Video/body camera Surveillance Footage OR law's  
 For Retention time laws. So the UNITED STATES DISTRICT  
 Court must go by state and local law's.  
 (23). (EXHIBIT-5), Pleading Special Matters of Fraud  
 explains the fraud of the defence and San Francisco  
 Police Department when they fraudulently try to  
 Cover up Brian Mendoza #2324 Initials P.M on  
 the San Francisco Field Arrest Card to Cover up  
 what Brian Mendoza #2324 did that day on February  
 26, 2019. Strip searching Plaintiff with out no Warrent.  
 Injuring Plaintiff's Hand, wrist, Fingers and raping Plaintiff  
 with his finger's.

## REQUESTED RELIEF

(1). The Plaintiff wants \$ 100,000.00 dollars for the excessive force these's officers committed. And failing to preserve electronically stored information like video/ Body Camera Surveillance Footage. AND For Brian Mendoza #2324 Raping Plaintiff with his fingers.

(2). The Plaintiff wants \$ 10,000.00 dollar's for the excessive legal work the Plaintiff had to do for fraudulently trying to cover up Brian Mendoza #2324 initials(BM). during the discovery process.

(3). The Plaintiff wants \$ 40,000.00 dollar's for all the legal documents that I had to prepare from the beginning of this Case Filed 12/17/2019 with the document ORIGINAL Complaint under civil rights act. 42/ U.S.C.S 1983,

(4). The Plaintiff added up SUM that Plaintiff is Requesting Relief For is: 150,000.00 in United States dollars.

Date: 12-19-2025

Signature of Attorney in Pro-se: Michael Luckert

Motion to Appeal AS OF Right / case NO. 19-CV-08204-PJH

(EXHIBIT-A)

ORDER OVERTULING Objections



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL L LUCKERT,  
Plaintiff,  
v.  
GUTIERREZ,  
Defendant.

Case No. 19-cv-08204-PJH

**ORDER OVERRULING OBJECTIONS**

Re: Dkt. 181

On March 3, 2025, the court issued an order denying plaintiff's motion for summary judgment and granting defendant's motion for summary judgment. See Dkt. 179. On the same day, the court also entered judgment. See Dkt. 180.

Plaintiff has subsequently filed objections, seeking to challenge the court's rulings, styled as an objection under Federal Rule of Civil Procedure 46. See Dkt. 181.

The court finds no merit in the arguments raised by plaintiff's objections, and the purported objections are overruled. The court will not entertain any further filings from plaintiff.

**IT IS SO ORDERED.**

Dated: July 25, 2025

/s/ Phyllis J. Hamilton  
PHYLLIS J. HAMILTON  
United States District Judge

(EXHIBIT A) ORDER OVERRULING OBJECTIONS

## (EXHIBIT-B)

Letter From defendant's Attorney OF Video/Body  
Camera Surveillance Were Erased or destroyed.

## CITY AND COUNTY OF SAN FRANCISCO

## OFFICE OF THE CITY ATTORNEY

DAVID CHIU  
City AttorneyEdmund T. Wang  
Deputy City AttorneyDirect Dial: (415) 554-3857  
Email: edmund.wang@sfcityattty.org

April 17, 2024

## VIA U.S. MAIL AND EMAIL

Michael Landon Luckert  
PFN: ULW-491  
Santa Rita County Jail  
5325 Broder Blvd.  
Dublin, CA 94568  
michaelluckert703@gmail.comRe: Michael Landon Luckert v. O. Smith, et al.  
Northern District Court Case No. 19-cv-08204-PJH

Dear Mr. Luckert:

This letter responds to your "Meet and Confer Letter on Document Production," which is dated April 8 2024, but which we did not receive until April 11, 2024.

With respect to your request for "the documented date that the video surveillance/body cameras were erased or destroyed," it is not clear what you claim has not been provided to you. You previously requested, "a copy of the documents that you filed about the day in January of 2020 the the defence erased, destroyed or did not preserve the video surveillance." (ECF No. 125.) And we agreed to re-produce "copies of documents previously exchanged by the parties and/or submitted to the Court, . . . as well as subpoenaed documents." (ECF No. 130.) These documents were produced to you on March 15, 2024, in paper copies, except for the subpoenaed radiology records.

The March 15, 2024 document production included each defendant's responses to your discovery requests, as well as the following:

- Reply In Support of Defendants' Motion to Dismiss or in the Alternative, Motion for Summary Judgment, which explained that "The surveillance video of Plaintiff's assault on library staff was transferred to the San Francisco Police Department on December 10, 2019, and disposed of on February 1, 2020" (ECF No. 57, at 3, n.2);
- Reply in Support of Defendants' Motion for Summary Judgment, which explained "[t]he Summons for Defendants were not issued until September 4, 2020 (ECF No. 22). While the surveillance video was disposed of on this prior on February 1, 2020" (ECF No. 79, at 3, 4 (citing Wang Ex. E)) and
- Exhibit E to the Declaration of Edmund T. Wang in Support of Reply in Support of Defendants' Motion for Summary Judgment, which is the "Memorandum" which concerned the handling of the surveillance video (ECF No. 79-2).

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EXHIBIT 1.0  
(EXHIBIT B)

Letter from defendant's Attorney of Video Surveillance/  
Body Camera Surveillance Footage destroyed  
before a year was up.

# (EXHIBIT-C)

F.R.C.P 37 (e), Failure to preserve electronically stored information



(2) *Unacceptable Excuse for Failing to Act.* A failure described in Rule 37(d)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).

(3) *Types of Sanctions.* Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)–(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(e) **FAILURE TO PRESERVE ELECTRONICALLY STORED INFORMATION.** If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:

(A) presume that the lost information was unfavorable to the party;

(B) instruct the jury that it may or must presume the information was unfavorable to the party; or

(C) dismiss the action or enter a default judgment.

(f) **FAILURE TO PARTICIPATE IN FRAMING A DISCOVERY PLAN.** If a party or its attorney fails to participate in good faith in developing and submitting a proposed discovery plan as required by Rule 26(f), the court may, after giving an opportunity to be heard, require that party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Mar. 30, 1970, eff. July 1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980; Pub. L. 96-481, §205(a), Oct. 21, 1980, 94 Stat. 2330, eff. Oct. 1, 1981; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 16, 2013, eff. Dec. 1, 2013; Apr. 29, 2015, eff. Dec. 1, 2015.)

## TITLE VI. TRIALS

### Rule 38. Right to a Jury Trial; Demand

(a) **RIGHT PRESERVED.** The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate.

(b) **DEMAND.** On any issue triable of right by a jury, a party may demand a jury trial by:

(1) serving the other parties with a written demand—which may be included in a pleading—no later than 14 days after the last pleading directed to the issue is served; and

(2) filing the demand in accordance with Rule 5(d).

(EXHIBIT.C) Failure to preserve electronically stored information.

# (EXHIBIT-D) AND (D.1)

(D). Federal law governing body camera/video Surveillance  
(D.1). STATE-level Regulations

AI Mode All News Videos Images Shopping Short videos More Tools

These are results for federal laws **on preservation** of body camera /video surveillance

Search instead for federal laws on preservation of body camera /video surveillance

AI Overview

EXHIBIT-D

There are no broad federal laws governing body camera video preservation for all law enforcement; however, some federal agencies have specific policies, and a pending bill (H.R. 843) proposes a 3-year minimum retention period for federal body camera footage in specific situations. Retention periods vary by state, with many state laws mandating longer storage for footage involving use of force, arrests, or complaints, while non-evidentiary footage is often retained for shorter periods, such as 60 to 90 days.



### Federal laws and policies

- **No comprehensive federal law:** There is no single, comprehensive federal law mandating how all body camera video must be preserved.
- **Agency-specific policies:** Individual federal agencies, such as the Department of Homeland Security (DHS), have their own policies. For example, DHS policy requires officers to activate their body cameras during specific interactions, like motor vehicle stops or searches, and to upload footage as soon as feasible.
- **H.R. 843:** A proposed bill, H.R. 843, would mandate a minimum 3-year retention period for federal body camera footage if a longer period is requested by an officer or their supervisor who asserts the footage has evidentiary or exculpatory value, or if the footage is used for training purposes.

### State and local laws

EXHIBIT-D-1

- **State-level regulations:** Most regulations on body camera video preservation are made at the state or local level, as states have their own specific laws.
- **Varying retention periods:** Retention periods differ by state. For example, some states have different requirements for non-evidentiary footage versus footage involving arrests or use of force.
- **Examples of state rules:**
  - **California:** Requires non-evidentiary footage to be retained for at least 60 days, and footage involving use of force or arrests to be kept for a minimum of two years.
  - **Other states:** Some states have shorter minimums for routine footage, like 30 to 90 days, but may require longer storage for evidentiary footage.

### Key differences

- **Evidentiary vs. non-evidentiary footage:** Most jurisdictions have different retention rules for footage that is considered evidence in an investigation versus footage from routine, non-evidentiary interactions.
- **Incident-based storage:** Footage is often categorized by incident. For example, a recording of a routine traffic stop may be erased after a shorter period, while a recording of a use-of-force incident will be preserved for a longer time.

x (EXHIBIT-D) Federal laws Governing body camera video preservation.  
(EXHIBIT-D-1) STATE LEVEL REGULATIONS

(EXHIBIT-E), Page 1 AND 2

Page 1, (California, AB 69 (2015) rules AND  
AB 1953 (2016).

Page 2, (AB 1953 (2016) (Continued))



California

(EXHIBIT.E)

Page 1

**AB 69** (2015) requires police departments to consider certain best practices when developing rules for downloading and storing body-worn camera data. Practices to consider include: establishing protocols and temporal standards for downloading data, developing measures to prevent misuse or tampering of the data, categorizing the nature of incidents at the time of download and stating the length of time the data must be stored. The guidelines recommend storing data from "non-evidentiary incidents" for 60 days and a minimum of two years in situations where force is used, an arrest is made, or where a complaint has been made against an officer or agency. Storage procedures should ensure evidentiary chains of custody are preserved, records of access and deletion of data are retained permanently and identify where body camera data should be stored. It also requires certain elements to be considered if third-party data storage vendors are used. In addition, the law requires police departments to retain ownership of body cameras, which shall not be accessed or released for any unauthorized purpose, and are explicitly prohibited from being uploaded onto public and social media Internet Web sites.

**AB 93** (2015) appropriates \$10 million to the Board of State and Community Corrections to administer grants that strengthen police-community relations, including grants to address any one time body-worn camera program costs.

**SB 424** (2015) provides that provisions prohibiting eavesdropping and recording or intercepting certain communications do not prohibit officers from using or operating body-worn cameras.

**SB 85** (2015) requires the California Highway Patrol, on or before Jan. 1, 2016, to develop a plan for implementing a body-worn camera pilot program. The pilot program shall explore: which officers should be assigned to wear a body camera and the circumstances under which the cameras should be worn, the minimum specifications for body-worn cameras, the practicality of an officer using a privately owned body camera, the best locations on the officer's body where the camera should be worn, best practices for officers to notify members of the public that they are being recorded, who should retain body camera data and how they should do it, best practices for officer review of recorded body-worn camera data and body-worn camera data's use for training.

(EXHIBIT.E)

**AB 1953** (2016) requires police departments that are establishing body camera policies and procedures to consider enumerated best practices. Best practices include (1) designating a person responsible for downloading the recorded data from the body-worn camera. (If the storage system does not have automatic downloading capability, the officer's supervisor should take immediate physical custody of the camera and be responsible for downloading the data in the case of an incident involving the use of force by an officer, an officer-involved shooting, or other serious incident.) (2) Establishing procedures for when data should be downloaded and how it should be tagged and categorized. (3) Establish specific measures to prevent data tampering, deleting, and copying, including prohibiting the unauthorized use, duplication, or distribution of body-worn camera data. (4) Specifically state the length of time that recorded data is to be stored. Non-evidentiary data should be retained for a minimum of 60 days, after which it may be erased, destroyed, or recycled. An agency may keep data for more than 60 days to have it available in case of a civilian complaint and to preserve transparency. Body camera data should be kept for two years if: it involves use of force by a peace officer or an officer-involved shooting, the recording is of an incident that leads to the detention or arrest of an individual; or the recording is relevant to a formal or informal complaint against a law enforcement officer or a



law enforcement agency. If evidence that may be relevant to a criminal prosecution is obtained from a recording made by a body-worn camera under this section, the law enforcement agency should retain the recording for any time relevant to a criminal prosecution. (5) Records or logs of access and deletion of data from body-worn cameras should be retained permanently. (6) Specify where the body-worn camera data will be stored. (7) If using a third-party vendor to manage the data storage system, consider using a reputable third-party vendor. Do this by entering into contracts that govern the vendor relationship and protect the agency's data, using a system that prevents data tampering and unauthorized access and has a reliable method for automatically backing up data for storage.

Requires that all body-worn camera data be the property of a law enforcement agency. Data cannot be used for personal use and prohibits data from being uploaded onto public and social media internet websites. Sanctions must be included for violations. Nothing in this section shall be interpreted to limit the public's right to access recorded data under the California Public Records Act.

**AB 459** (2017) specifies that the California Public Records Act does not require disclosure of a video or audio recording that was created during the commission or investigation of the crime of rape, incest, sexual assault, domestic violence or child abuse that depicts the face, intimate body part, or voice of a victim of the incident depicted in the recording. The law also requires a law enforcement agency to justify withholding such a video or audio recording by demonstrating that the public interest served by not disclosing the recording clearly outweighs the public interest served by disclosure of the recording. The law authorizes a victim who is a subject of such a recording to be permitted to inspect the recording and to obtain a copy of the recording.

## Colorado

**HB 1285** (2015) created a body-worn camera grant program, a body-worn camera fund and a body-worn camera study committee. The grant program will be administered by the Division of Criminal Justice and funded by the body-worn camera fund. The fund will be in the state treasury and financed by annual legislative appropriations, as well as, any grants and donations received. The body-worn camera study group will examine best practices and submit a written report of its recommendations to the House and Senate Judiciary committees before March, 1 2016. The leg

(EXHIBIT.E), page 2

(EXHIBIT-F)


preservation of body camera / video Surveillance Retention

preservation of body camera/video : X      Sign in


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◆ AI Overview


(EXHIBIT.F)

Preserving body camera and video surveillance records involves secure storage, clear retention policies, and maintaining the chain of custody. Shorter retention periods, like 30 to 90 days, are often used for non-evidentiary footage, while records from significant events like use of force or arrests are kept for longer durations, sometimes for several years, to serve as evidence. It's crucial to retain records of access and deletion, ensure data ownership remains with the agency, and handle public access according to specific policies. 

## Retention periods

- **Routine footage:** Typically kept for a shorter period, ranging from 30 to 90 days.
- **Evidentiary footage:** Retained for a longer duration, often several years or indefinitely, particularly if it involves use of force, arrests, or a complaint.
- **Active investigations:** Footage can be withheld from public release for a period (e.g., up to 60 days) while an investigation is active to avoid interference. 

## Data management and security

- **Chain of custody:** Procedures must be in place to preserve the chain of custody for all video evidence.
- **Access and deletion records:** A permanent record of all access and deletion of data must be maintained.
- **Data ownership:** Police departments must retain ownership of the cameras and data, and unauthorized access or release to social media is prohibited.
- **Third-party vendors:** Policies must consider the requirements for data storage by third-party vendors, including the vendor's ability to maintain chain of custody and security. 

## Public access and disclosure

- **Varying policies:** Public access varies by jurisdiction and is often handled through the Freedom of Information Act (FOIA) or similar state laws, but specific restrictions can



# (EXHIBIT - G) AND (G.1)

(G), California Code, Penal Code - PEN § 832.18  
(G.1), Establish SPECIFIC MEASURES

[FINDLAW](#) / [CODES](#) / [CALIFORNIA](#) / [PENAL CODE](#) / § 832.18

**(EXHIBIT. G)**

## California Code, Penal Code - PEN § 832.18

Current as of January 01, 2023 | Updated by [Findlaw Staff](#)

(a) It is the intent of the Legislature to establish policies and procedures to address issues related to the downloading and storage data recorded by a body-worn camera worn by a peace officer. These policies and procedures shall be based on best practices.

(b) When establishing policies and procedures for the implementation and operation of a body-worn camera system, law enforcement agencies, departments, or entities shall consider the following best practices regarding the downloading and storage of body-worn camera data:

(1) Designate the person responsible for downloading the recorded data from the body-worn camera. If the storage system does not have automatic downloading capability, the officer's supervisor should take immediate physical custody of the camera and should be responsible for downloading the data in the case of an incident involving the use of force by an officer, an officer-involved shooting, or other serious incident.

(2) Establish when data should be downloaded to ensure the data is entered into the system in a timely manner, the cameras are properly maintained and ready for the next use, and for purposes of tagging and categorizing the data.

**EXHIBIT (G.1)**

(3) Establish specific measures to prevent data tampering, deleting, and copying, including prohibiting the unauthorized use, duplication, or distribution of body-worn camera data.

(4) Categorize and tag body-worn camera video at the time the data is downloaded and classified according to the type of event or incident captured in the data.

(5) Specifically state the length of time that recorded data is to be stored.

(A) Unless subparagraph (B) or (C) applies, nonevidentiary data including video and audio recorded by a body-worn camera should be retained for a minimum of 60 days, after which it may be erased,

## (EXHIBIT-H) (H.1) (H.2)

(H) EVIDENTIARY DATA INCLUDING VIDEO  
AND AUDIO RECORDED

(H.1) Determining a retention schedule

(H.2) Consulting with internal legal Counsel

destroyed, or recycled. An agency may keep data for more than 60 days to have it available in case of a civilian complaint and to preserve transparency.

(EXHIBIT H)

(B) Evidentiary data including video and audio recorded by a body-worn camera under this section should be retained for a minimum of two years under any of the following circumstances:

- (i) The recording is of an incident involving the use of force by a peace officer or an officer-involved shooting.
- (ii) The recording is of an incident that leads to the detention or arrest of an individual.
- (iii) The recording is relevant to a formal or informal complaint against a law enforcement officer or a law enforcement agency.

(C) If evidence that may be relevant to a criminal prosecution is obtained from a recording made by a body-worn camera under this section, the law enforcement agency should retain the recording for any time in addition to that specified in subparagraphs (A) and (B), and in the same manner as is required by law for other evidence that may be relevant to a criminal prosecution.

(EXHIBIT-H.1)

(D) In determining a retention schedule, the agency should work with its legal counsel to determine a retention schedule to ensure that storage policies and practices are in compliance with all relevant laws and adequately preserve evidentiary chains of custody.

(E) Records or logs of access and deletion of data from body-worn cameras should be retained permanently.

(6) State where the body-worn camera data will be stored, including, for example, an in-house server that is managed internally, or an online cloud database that is managed by a third-party vendor.

(7) If using a third-party vendor to manage the data storage system, the following factors should be considered to protect the security and integrity of the data:

- (A) Using an experienced and reputable third-party vendor.
- (B) Entering into contracts that govern the vendor relationship and protect the agency's data.
- (C) Using a system that has a built-in audit trail to prevent data tampering and unauthorized access.
- (D) Using a system that has a reliable method for automatically backing up data for storage.

(EXHIBIT-H.2)

(E) Consulting with internal legal counsel to ensure the method of data storage meets legal requirements for chain-of-custody concerns.



# (EXHIBIT - I)

ORDER DENYING PLAINTIFF MOTION FOR  
SUMMARY JUDGMENT AND GRANTING DEFENDANT  
MOTION FOR SUMMARY JUDGMENT.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL LANDON LUCKERT,  
Plaintiff,

v.

EDWARD GUTIERREZ,  
Defendant.

Case No. 19-cv-08204-PJH

**ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT  
AND GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

Re: Dkt. Nos. 169, 170

Plaintiff, a former county detainee, proceeds with a pro se civil rights complaint under 42 U.S.C. § 1983. He alleges that defendant Deputy Gutierrez used excessive force during two separate pat down searches. Plaintiff filed a motion for summary judgment and defendant filed a second motion for summary judgment. Dkt. No. 169, 170. For the reasons set forth below, plaintiff's motion for summary judgment is denied and defendant's motion for summary judgment is granted.

**PRIOR PROCEEDINGS**

On September 3, 2020, the court ordered service of plaintiff's amended complaint (Dkt. No. 20) on several claims of excessive force against multiple defendants regarding plaintiff's arrest at the public library and placement in a cell at the county jail. Dkt. No. 21. Many claims and defendants were later dismissed but what is relevant for the instant motions were the allegations that defendant Gutierrez injured plaintiff's wrist at the library and Gutierrez and former defendant Mendoza injured plaintiff while placing him in a cell at the county jail. Dkt. No. 20 at 3-6. Plaintiff stated that Mendoza bent his wrist back and pulled the wrist out of the joint and injured plaintiff's hand when he removed plaintiff's soiled pants at the county jail. *Id.* at 6-7.

(EXHIBIT I)

United States District Court  
Northern District of California

United States District Court  
Northern District of California

1 Defendants filed a summary judgment motion which included various  
2 declarations and exhibits. Plaintiff filed several oppositions (Dkt. Nos. 77, 81, 85) and  
3 generally argued that he was not resisting but he presented very few arguments  
4 regarding the actions of the individual defendants. <sup>Declaration</sup> The operative amended complaint  
5 had presented specific allegations against Mendoza, but in opposition to summary  
6 judgment plaintiff stated that this was a mistake because he confused Mendoza and  
7 Gutierrez. Dkt. No. 77 at 9-10. Plaintiff asked that the allegations against the defendants  
8 be switched. *Id.*

9 In light of plaintiff proceeding pro se and at times being incarcerated or homeless,  
10 he was permitted to switch the allegations. The summary judgment motion included a  
11 declaration submitted by Mendoza and exhibits describing the amount of force that was  
12 used, which he argued was minimal. <sup>I did say that I hurt a</sup> Plaintiff did not even attempt to refute this  
13 assertion, and most of his opposition to summary judgment focused on Gutierrez.

14 On December 28, 2022, the court granted summary judgment to Mendoza, who  
15 was dismissed with prejudice. Dkt. No. 89 at 7-11. Summary judgment was denied to  
16 Gutierrez and the case continued with claims of excessive force against Gutierrez for the  
17 events at the library and at the county jail. *Id.*

18 This case was originally scheduled for trial against Gutierrez in May 2024, but was  
19 continued to July 29, 2024, because of plaintiff's arrest, sentencing and subsequent  
20 incarceration in a federal case in this district. In April 2024, plaintiff filed several motions,  
21 one of which sought to recall Mendoza and substitute him for Gutierrez and dismiss  
22 Gutierrez and call him as a witness. Dkt. Nos. 147, 150, 154, 155. Plaintiff once again  
23 sought to switch the allegations regarding Mendoza and Gutierrez. He argued that it was  
24 Mendoza who used excessive force at the county jail. Dkt. No. 155 at 1-2. To further  
25 confuse the issue, plaintiff also stated in an additional filing that Gutierrez should in fact  
26 not be dismissed but kept as a defendant for injuring plaintiff's wrist at the library while  
27 Mendoza was responsible for the excessive force at the jail. Dkt. No. 160 at 2-4.

not that I had to do about 14 months in physical therapy

1 The court construed plaintiff's motions as a motion for relief from a judgment or  
2 order under Rule 60 and a motion to amend under Rule 15. On June 14, 2024, plaintiff's  
3 motions were denied. Dkt. No. 162. Mendoza was not recalled and remained dismissed  
4 with prejudice. *Id.* at 8. The trial date was vacated, and defendant was permitted to seek  
5 additional discovery. In light of plaintiff's changing positions on who used excessive force  
6 against him, defendant Gutierrez was permitted to file a second motion for summary  
7 judgment regarding events at the library and the jail. *Id.* Plaintiff was not given  
8 permission to file a motion for summary judgment as the dispositive motion deadline had  
9 long since expired and because plaintiff's prolific filings simply reargued the same and  
10 different facts over and over. Nonetheless, plaintiff did file a motion/opposition and it has  
11 been considered by the court.

## 12 MOTION FOR SUMMARY JUDGMENT

### 13 Legal Standard

14 Summary judgment is proper where the pleadings, discovery and affidavits show  
15 that there is "no genuine dispute as to any material fact and the movant is entitled to  
16 judgment as a matter of law." Fed. R. Civ. P. 56(a). Material facts are those which may  
17 affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248  
18 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a  
19 reasonable jury to return a verdict for the nonmoving party. *Id.*

20 The moving party for summary judgment bears the initial burden of identifying  
21 those portions of the pleadings, discovery and affidavits which demonstrate the absence  
22 of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986);  
23 *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). When  
24 the moving party has met this burden of production, the nonmoving party must go beyond  
25 the pleadings and, by its own affidavits or discovery, set forth specific facts showing that  
26 there is a genuine issue for trial. *Id.* If the nonmoving party fails to produce enough  
27 evidence to show a genuine issue of material fact, the moving party wins. *Id.*



**Facts**

A review of the record indicates that the following facts are undisputed unless otherwise noted:

On February 26, 2019, at approximately 4:15 p.m., Library Patrol Officer Ochoa was on duty at the San Francisco Main Library and received a call that a library staff member had been physically assaulted on the sixth floor. Motion for Summary Judgment 2 ("MSJ2") Wang Ex. B, Ochoa Decl. ¶ 3.<sup>1</sup> Ochoa responded to the sixth floor, and library staff identified plaintiff as the assailant, who was still in the area. *Id.* at ¶ 4. Ochoa approached plaintiff, who was visibly agitated and acting erratically and took up an aggressive stance. *Id.* at ¶¶ 4, 5.

After attempting to speak with plaintiff, Ochoa radioed for assistance to the San Francisco deputy sheriffs who were assigned to the library. *Id.* at ¶ 5. Deputy Smith arrived and tried to speak with plaintiff. Wang Ex. C, Smith Decl. ¶¶ 3-5. Smith observed that plaintiff was still visibly agitated. *Id.* at ¶ 4.

After trying to speak with plaintiff, Smith, with Ochoa's assistance, handcuffed plaintiff for everyone's safety as they continued to investigate. Smith Decl. ¶ 5. Once plaintiff was handcuffed, Smith told plaintiff that he was under arrest for willfully resisting, delaying or obstructing a peace officer. *Id.*

Smith then escorted plaintiff from the sixth floor to the security office on the first floor. *Id.* at ¶ 6. Smith radioed his partner, defendant Deputy Gutierrez, and informed him about the incident and asked him to meet him at the security office. *Id.* at ¶ 7.

Gutierrez and other deputies met Smith, Ochoa, and plaintiff at the security office. Brule Decl. ¶ 3; Wang E. A, Gutierrez Decl. ¶ 3. Prior to searching plaintiff, who was still handcuffed, Gutierrez asked him if he had anything on his person that could harm Gutierrez. Gutierrez Decl. ¶ 4. Plaintiff did not respond but was verbally hostile and aggressive. *Id.* ¶ 3. Gutierrez applied a bent wrist-lock on plaintiff with one hand and pat

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<sup>1</sup> Many of the declarations are the same declarations from the first summary judgment motion.

1 searched with the other. *Id.* ¶ 5 Gutierrez applied minimal pressure and found a knife  
2 concealed in plaintiff's pocket. *Id.* at ¶¶ 4-5. Nobody made any physical contact with  
3 plaintiff in the security office other than when Gutierrez searched him. *Id.* at ¶ 5.

4 Plaintiff generally disputes Gutierrez assertions, though his allegations differ in  
5 various filings. In the amended complaint, plaintiff stated that at the security office  
6 multiple officers pushed him onto the bench and on the floor and twisted his wrists  
7 causing severe pain. Dkt. No. 20 at 5. In his opposition to the first summary judgment  
8 motion, he alleged that multiple officers used excessive force on him. Dkt. No. 77 at 7.

9 At his deposition, plaintiff stated that upon entering the security office, he was  
10 immediately pushed to the floor, officers got on top of him, and then jumped on him and  
11 were bending his wrists. Wang Ex. F, Luckert Depo at 72-73.

12 In his summary judgment motion and opposition to the second summary judgment  
13 motion, plaintiff states that he was brought to the security office and one officer applied  
14 pressure to his handcuffed hand. Dkt. No. 169 at 9-10; Dkt. No. 175 at 2-3. He did not  
15 know which officer was responsible for applying pressure to his handcuffed hand until he  
16 read the declaration from each officer and determined it was Gutierrez. *Id.* In these  
17 sections of his filings, plaintiff does not address his original assertions that multiple  
18 officers jumped on him, pushed him to the ground, and twisted his wrists. *Id.* Later in  
19 these filings, plaintiff quotes his earlier filings and states several people pushed him to  
20 the bench and floor and twisted his wrists. Dkt. No. 169 at 18; Dkt. No. 175 at 11.

21 In his deposition, plaintiff stated that at the security office the incident with multiple  
22 officers jumping on him and knocking him to the ground occurred before "[t]hey went in  
23 [his] pockets and everything and tried to find ID and stuff like that." *Id.* at 76-77. Plaintiff  
24 testified that "after they were done" using force—"after they went away and they weren't  
25 beating me up anymore, they weren't around me, I ended up trying to get up"—and that  
26 was when "[t]hey went in my pockets too. They went in my pockets and everything and  
27 tried to find ID and stuff like that." *Id.* Plaintiff did not argue that the force used during the  
28 search of his pockets in the security office was excessive. *Id.* at 72-77.

1 Gutierrez and others then escorted plaintiff to the transport van outside of the  
2 library and secured him in the back. Gutierrez Decl. ¶ 6 Deputy Mendoza arrived and  
3 drove plaintiff to San Francisco County Jail with Gutierrez. Gutierrez Decl. ¶ 7; Wang Ex.  
4 E, Mendoza Decl. ¶ 3. Upon arriving at the jail, plaintiff was placed into a holding cell.  
5 Gutierrez Decl. ¶ 9. Before, being placed in the holding cell, Gutierrez again searched  
6 plaintiff by applying a rear wrist-lock on plaintiff with minimal pressure. Gutierrez Decl. ¶  
7 9. This claim against Gutierrez was already dismissed in the prior summary judgment  
8 motion. Dkt. No. 89 at 4, 7.

9 During the booking process at the jail, plaintiff refused to answer some questions  
10 from Jail Medical Services, including refusing to answer whether he was suicidal.  
11 Gutierrez Decl. ¶ 10. When asked if he was injured or had any wounds, plaintiff  
12 answered in the negative. Chan Decl. ¶ 11. Plaintiff disputes this and states that when  
13 he began to tell medical staff about his injuries, he was taken to a cell. Dkt. No. 175 at 8.

14 Plaintiff was then placed in a safety cell for being combative and presenting an  
15 imminent danger to himself and others. Mendoza Decl. ¶ 6. Plaintiff was ordered to his  
16 stomach so that his handcuffs could be removed, and his clothes were removed because  
17 he had soiled them. *Id.*; Gutierrez Decl. ¶ 12. Other deputies removed plaintiff's  
18 handcuffs and clothes. Mendoza Decl. ¶ 7. Gutierrez states he did not make physical  
19 contact with plaintiff while in the safety cell. Gutierrez Decl. ¶ 11. Plaintiff has stated that  
20 it was not Gutierrez who was involved in removing his clothes or handling his wrists while  
21 in the safety cell. Dkt. No. 150 at 1-7. Plaintiff alleged that the removal of his clothes and  
22 handling of his wrist caused him a great deal of pain and suffering. Dkt. No. 20 at 7.

23 Plaintiff was released from custody the following day, February 27, 2019.  
24 Mendoza Decl. Ex. A at 2. Medical reports from March 1, 2019, indicated that plaintiff's  
25 hand had no visible fractures or malalignment, but there was regional soft tissue swelling  
26 and there was a punctate hyperdensity in the distal left thumb and some excoriations on  
27 the fingers. Dkt. No. 169-1 at 15, 18.

## ANALYSIS

### Legal Standard

An allegation of the use of excessive force by a law enforcement officer in effectuating an arrest states a valid claim under 42 U.S.C. § 1983. See *Rutherford v. City of Berkeley*, 780 F.2d 1444, 1447 (9th Cir. 1986), *overruled on other grounds by Graham v. Connor*, 490 U.S. 386 (1989); see also *Byrd v. Phoenix Police Dep't*, 885 F.3d 639, 641-42 (9th Cir. 2018) (pro se allegations that police officers “beat the crap out of” plaintiff and caused him severe injury enough to support a legally cognizable claim under § 1983). Excessive force claims which arise in the context of an arrest or investigatory stop of a free citizen are analyzed under the Fourth Amendment reasonableness standard. See *Graham v. Connor*, 490 U.S. 386, 394-95 (1989).

“To determine whether officers used excessive force during an arrest, courts balance ‘the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.’” *Luchtel v. Hagemann*, 623 F.3d 975, 980 (9th Cir. 2010) (quoting *Graham*, 490 U.S. at 396). In the Ninth Circuit, evaluation of an excessive force claim under *Graham* involves three steps: (1) assessment of the severity of the intrusion on Fourth Amendment rights by evaluating the type and amount of force used; (2) evaluation of the government’s interest in the use of force; and (3) balancing the gravity of the intrusion on the individual with the government’s need for the intrusion. *Glenn v. Washington Cnty*, 673 F.3d 864, 872 (9th Cir. 2011). “The operative question in excessive force cases is ‘whether the totality of the circumstances justifie[s] a particular sort of search or seizure.’” *County of Los Angeles v. Mendez*, 137 S. Ct. 1539, 1542 (2017) (alteration in original) (quoting *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)).

With respect to the events at the county jail, defendant is entitled to summary judgment. It is undisputed that the allegation involving plaintiff being subject to a rear-wrist lock while being patted down upon arrival at the jail was already dismissed in the prior summary judgment motion. It is also undisputed that defendant was not involved in

1 the removal of plaintiff's clothes or handling of his wrists while in the safety cell.

2 In his motion for summary judgment and opposition to defendant's second  
3 summary judgment motion, plaintiff attempts to alter his allegations regarding events at  
4 the jail. He argues that the initial search at the holding cell of the jail by defendant  
5 actually occurred later during the incident in the safety cell and that both cells are actually  
6 the same. Dkt. No. 169 at 16-17. Plaintiff argues that defendant's declaration discussing  
7 the events and different cells is a lie. *Id.* at 17. Plaintiff provides no support for his  
8 allegations, nor does he address why he is only now altering or clarifying his allegations.

9 Regardless, plaintiff's conclusory allegations with no support are insufficient to  
10 survive summary judgment. See *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984  
11 (9th Cir. 2007) ("Conclusory, speculative testimony in affidavits and moving papers is  
12 insufficient to raise genuine issues of fact and defeat summary judgment."). It is  
13 undisputed and plaintiff has previously conceded that defendant was not involved in the  
14 events in the safety cell. The court previously dismissed the claim that excessive force  
15 was used during the initial search upon arrival at the jail. Because it is undisputed that  
16 defendant was not involved in the relevant incident at the jail, he is entitled to summary  
17 judgment.

18 The court now addresses the incident at the library security office. In the amended  
19 complaint and original summary judgment motion, plaintiff argued that multiple people  
20 were involved in assaulting him that led to his wrists being injured. In the first summary  
21 judgment motion, plaintiff only presented specific facts and arguments regarding  
22 Gutierrez and it was undisputed that he was the only defendant involved in searching  
23 plaintiff at the library security office. Based on those facts and the disputed facts  
24 presented by the parties, the court denied summary judgment for Gutierrez.

25 However, in plaintiff's summary judgment motion and opposition to defendant's  
26 second summary judgment motion, he presents different allegations and arguments.  
27 While he does briefly reference the prior allegations from his amended complaint  
28 regarding multiple people assaulting him, he also states that he was brought to the



1 security office, and he did not know which officer was responsible for applying pressure  
2 to his handcuffed wrists until he read the declaration from each officer and determined it  
3 was defendant.

4 It is difficult to discern plaintiff's specific allegations and arguments. Defendant's  
5 second summary judgment motion specifically focuses on the incident at the library  
6 security office, but plaintiff only briefly addresses it. In plaintiff's deposition testimony,  
7 plaintiff stated that at the security office the incident with multiple officers jumping on him  
8 and knocking him to the ground occurred before "[t]hey went in [his] pockets and  
9 everything and tried to find ID and stuff like that." Wang Ex. F, Luckert Depo at 76-77.  
10 Plaintiff stated that "after they were done" using force—"after they went away and they  
11 weren't beating me up anymore, they weren't around me, I ended up trying to get up"—  
12 and that was when "[t]hey went in my pockets too. They went in my pockets and  
13 everything and tried to find ID and stuff like that." *Id.* Plaintiff's own deposition testimony  
14 does not contend that any force was used when his pockets were searched, and it is  
15 undisputed that defendant was the individual who searched plaintiff's pockets.

16 Looking to all of this evidence, defendant has met his burden in demonstrating the  
17 absence of any genuine issue of material fact. Defendant has shown that the only force  
18 used at the security office was when he used a one-handed bent wrist-lock on plaintiff,  
19 using minimal pressure in order to pat search plaintiff with his other hand and this did not  
20 constitute excessive force.

21 Plaintiff has not met his burden in showing that there is a genuine issue for trial.  
22 In the second summary judgment motion, defendant noted plaintiff's deposition testimony  
23 and argued that it demonstrated there was no excessive force when defendant searched  
24 him. Plaintiff did not address this in his filings, nor does he meaningfully challenge  
25 defendant's other assertions.

26 Plaintiff presents very few allegations or arguments regarding how excessive force  
27 was used at the security office. Plaintiff argues that defendant applied pressure to his  
28 handcuffed wrist at the security office. Dkt. No. 175 at 2-3. He separately argues that

1 defendant was hell bent on injuring his hand. Dkt. No. 176 at 8-8. However, he provides  
2 no other details or arguments for this particular statement, and it is not clear which  
3 incident this statement is referencing. While plaintiff repeats the allegations from his  
4 amended complaint that multiple people were involved in assaulting him, he does not  
5 present sufficient arguments regarding defendant's involvement, nor does he clarify his  
6 allegations and arguments in response to the contentions in defendant's second  
7 summary judgment motion.

8 Plaintiff is proceeding pro se and has at times been incarcerated; therefore, the  
9 court has liberally construed his filings. See *Thomas v. Ponder*, 611 F.3d 1144, 1150  
10 (9th Cir. 2010) ("We have, therefore, held consistently that courts should construe  
11 liberally motion papers and pleadings filed by pro se inmates and should avoid applying  
12 summary judgment rules strictly."). However, while *Ponder* relieves pro se inmates from  
13 strict compliance with summary judgment rules, it does not entirely release them from  
14 any obligation to identify or submit at least some competent evidence in support of their  
15 claim. *Soto v. Sweetman*, 882 F.3d 865, 873 (9th Cir. 2018) (plaintiff not entitled to  
16 equitable tolling because he failed to allege in his complaint that he could not proceed  
17 with grievance process until after an investigation was completed; failed to submit any  
18 declaration, affidavit or other competent evidence in his opposition to summary judgment;  
19 and failed to raise the issue until responding to the district court's show cause order).  
20 Moreover, it is not the task of the district court to scour the record in search of a genuine  
21 issue of triable fact. *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996). The  
22 nonmoving party has the burden of identifying with reasonable particularity the evidence  
23 that precludes summary judgment. *Id.* If the nonmoving party fails to do so, the district  
24 court may properly grant summary judgment in favor of the moving party. See *id.*; see,  
25 e.g., *Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d 1026, 1028-29 (9th Cir. 2001) (even if  
26 there is evidence in the court file which creates a genuine issue of material fact, a district  
27 court may grant summary judgment if the opposing papers do not include or conveniently  
28 refer to that evidence).

1 Plaintiff's brief and conclusory arguments are insufficient to overcome summary  
2 judgment. He now argues that multiple people assaulted him and that defendant was  
3 involved, but the evidence as reflected by his deposition testimony is that there was no  
4 force used at this time. Thus, he has not met his burden by setting forth specific facts to  
5 show that this occurred and there is a genuine issue for trial. Plaintiff has not presented  
6 arguments or evidence for the court to determine if there is a factual dispute sufficiently  
7 material to warrant denial of defendant's second summary judgment motion. Nor has  
8 plaintiff met his burden in showing that defendant's brief pat down in the library security  
9 office constituted excessive force when he stated at the deposition that the force was  
10 used before his pockets were searched. Plaintiff's argument regarding the pat down  
11 seem to chiefly rely on defendant's statement that he applied a bent wrist-lock with  
12 minimal pressure. However, simply because defendant applied some pressure to  
13 plaintiff's wrist does not automatically result in a finding of excessive force. Defendant  
14 argues that it was a de minimis use of force and plaintiff has not met his burden in  
15 showing that there are disputed facts regarding the use of force. Much of defendant's  
16 second summary judgment motion focused on the incident at the library security office.  
17 Despite the importance of this claim, plaintiff only presented cursory arguments in his  
18 filings.

19 The court notes that unreasonable force claims are generally questions of fact for  
20 a jury. *See Headwaters Forest Defense v. Cnty. of Humboldt*, 240 F.3d at 1185, 1198  
21 (9th Cir. 2000) *overruled on other grounds*; *Hervey v. Estes*, 65 F.3d 784, 791 (9th Cir.  
22 1995) (citing *Barlow v. Ground*, 943 F.2d 1132, 1135 (9th Cir. 1991). Although excessive  
23 force cases can be decided as a matter of law, they rarely are because the Fourth  
24 Amendment test for reasonableness is inherently fact specific. *See Headwaters*, 240  
25 F.3d at 1198; *see, e.g., Estate of Diaz v. City of Anaheim*, 840 F.3d 592, 605-06 (9th Cir.  
26 2016) (although plaintiffs presented substantial evidence that force was unreasonable,  
27 judgment as a matter of law inappropriate because defendants also presented substantial  
28 evidence to support their position; jury entitled to choose between both positions based

1 on their weighing of the evidence and witnesses' credibility).

2 Here, it is difficult for the court to determine the exact nature of plaintiff's  
3 allegations, and he has ultimately failed to meet his burden in demonstrating disputed  
4 facts to show excessive force during the search at the library office. He has not  
5 sufficiently shown specifically which defendant used excessive force or that the minimal  
6 pressure Gutierrez used during the search was excessive. See *Donovan v. Phillips*,  
7 Case No. 14-cv-0680-CRB, 2015 WL 993324, at \*5-7 (N.D. Cal. Mar. 4, 2015), *aff'd*,  
8 *Donovan v. Phillips*, 685 Fed. App'x 611 (9th Cir. 2017) (gripping a woman's wrist,  
9 applying pressure, and twisting her arm, causing her to roll onto the ground and injuring  
10 her rotator cuff when she did not comply with orders to get back into a car was objectively  
11 reasonable). While it is undisputed that plaintiff was diagnosed with some injuries to his  
12 wrist three days after these events, he has not shown that the injury was from this search  
13 conducted by defendant. Summary judgment is granted to defendant for this claim.

#### 14 **Qualified Immunity**

15 The defense of qualified immunity protects "government officials . . . from liability  
16 for civil damages insofar as their conduct does not violate clearly established statutory or  
17 constitutional rights of which a reasonable person would have known." *Harlow v.*  
18 *Fitzgerald*, 457 U.S. 800, 818 (1982). The rule of "qualified immunity protects 'all but the  
19 plainly incompetent or those who knowingly violate the law.'" *Saucier v. Katz*, 533 U.S.  
20 194, 202 (2001) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). Defendants can  
21 have a reasonable, but mistaken, belief about the facts or about what the law requires in  
22 any given situation. *Id.* at 205. A court considering a claim of qualified immunity must  
23 determine whether the plaintiff has alleged the deprivation of an actual constitutional right  
24 and whether such right was clearly established, such that it would be clear to a  
25 reasonable officer that his conduct was unlawful in the situation he confronted. See  
26 *Pearson v. Callahan*, 555 U.S. 223, 236 (2009) (overruling the sequence of the two-part  
27 test that required determining a deprivation first and then deciding whether such right was  
28 clearly established, as required by *Saucier*). The court may exercise its discretion in



BY COMMITTING EXCESSIVE FORCE the Defendant's lost their immunity because the committed excessive force

United States District Court  
Northern District of California

deciding which prong to address first, considering the particular circumstances of each case. *Pearson*, 555 U.S. at 236.

CONSTITUTIONAL AMENDMENTS  
AND 4th Amendment

Here, the court found that defendant did not deprive plaintiff of a constitutional right. Defendant is entitled to qualified immunity because the undisputed facts

demonstrate that defendant did not utilize excessive force during the two separate searches. With respect to the search at the library security office, it would not be clear to a reasonable deputy that the minimal pressure used to search plaintiff would violate his constitutional rights.

### CONCLUSION

1. For the reasons set forth above, defendant's motion for summary judgment (Dkt. No. 170) is **GRANTED** and plaintiff's motion for summary judgement (Dkt. No. 169) is **DENIED**.

2. The clerk shall close this case.

**IT IS SO ORDERED.**

Dated: March 3, 2025

/s/ Phyllis J. Hamilton

PHYLLIS J. HAMILTON  
United States District Judge

as shown  
Through out My entire civil case documents  
AND medical EXHIBITS. It was a  
INJURY that lasted 16 MONTHS.  
WHICH IS ALSO IN THE PLAINTIFF  
SUMMARY Judgment.

The Documented Medical documents  
show that I Needed physical Therapy.  
FOR 15/16 MONTHS. That is not a de minimus  
injury



(EXHIBIT-J)

---

OBJECTION TO A RULING OR ORDER

FILED

MAR 19 2025

CLERK, U.S. DISTRICT COURT  
NORTH DISTRICT OF CALIFORNIA

1 Michael Luckert

2 391 ELLIS STREET

3 San Francisco, CA 94102

4 MichaelLuckert2@gmail.com

5 Attorney in Pro-Se: Michael Luckert

6  
7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF California

9 Michael Luckert, Plaintiff

Case No. 19-CV-08204-  
PJH

10 .VS

11 San Francisco County

12 Police: Police officer

13 Gutierrez

Objections to a ruling  
OR ORDER

14 defendant's

F.R.C.P. Rule 46

16 A Formal exception to a ruling or order is  
 17 unnecessary. When the ruling or order is  
 18 requested or made, a party need only state  
 19 the action it wants the courts to take OR  
 20 object to, along with the grounds for the  
 21 request or objection. Failing to object does  
 22 not prejudice a party who had no opportunity  
 23 to do so when the ruling or order was made.  
 24

25 (a). In General, Judges and attorneys in Federal  
 26 civil procedure cases should follow the Federal  
 27 Rules of Civil Procedure (FRCP) as they stand  
 28 in 2019, which includes amendments made  
 objections to a ruling or order

page 1 of 11

\* plaintiff  
 and written  
 mistake Did say 2025

(EXHIBIT J) objections to a ruling or order  
 pages 1-11

1 effective in 2019 and any subsequent  
 2 changes rather than relying solely on  
 3 the rules as they existed in 2015.

4 (b). Failure to Preserve Electronically  
 5 Stored Information that should have been  
 6 preserved in the anticipation or conduct  
 7 of litigation is lost because a party failed  
 8 to take reasonable steps to preserve it,  
 9 and it can not be restored or replaced through  
 10 additional discovery, the court:

11 (1) upon finding prejudice to another party  
 12 from loss of the information, may order  
 13 measures no greater than necessary to cure  
 14 the prejudice; or

15 (2) Only upon finding that the party acted  
 16 with the intent to deprive another party of  
 17 the information's use in the litigation may:

18 (A) presume that the lost information  
 19 was unfavorable to the party;

20 (B) instruct the jury that it may or must  
 21 presume the information was unfavorable to  
 22 the party; 2A

23 (C) dismiss the action or enter a default  
 24 judgment.

25  
 26 (c). OBJECTIONS

27  
 28 (1). I, Michael Luckert, have a Objection  
objection to a ruling or order

page 2 of 11

1 that are of a Federal Rule of Civil  
 2 Procedure. (Rule 37(e)). In which the defence and  
 3 Police officer: Gutierrez and the  
 4 San Francisco Police department. Broke.  
 5 Because all of rule 37(e) applies when it  
 6 came to the Defendant Officer Gutierrez and  
 7 the San Francisco Police and Gutierrez Counsel.  
 8 Destroying/Erased Body Camera and Video  
 9 Surveillance of this incident before a year was  
 10 up, which that is the minimum standard that  
 11 even State Law must abide by for preserving  
 12 Electronically Stored Information. strike out  
 13

14 (d). The Federal Rules of Civil Procedure Rule 37(e)  
 15 was made for a Purpose. So the preservation of  
 16 Electronically Stored Information can stand up against  
 17 the lies of old school law. Where it was the  
 18 Policeman's Word against the people of the  
 19 United States. I believe Transparency is  
 20 What this rule 37(e) has in mind.

21 (e). Under the Federal Rules of Civil  
 22 Procedure, a defendant's duty to preserve \*Handwritten  
 23 electronically stored information (ESI) begins 3 line 26  
 24 when they reasonably anticipate litigation. Should say  
 25 Even before a lawsuit is filed, under Common Amended  
 26 law and as expressly referenced in amended complaint  
 27 Federal Rule of Civil Procedure (FRCP) 37(e).  
 28 19-cv-08204-PJH complaint is filed on: 12-17-2019.  
 objection to a ruling on order Page 3 of 11

(F). The defendant, his counsel and the San Francisco Police need to be held accountable for breaking F.R.C.P. 37(e).

### (g). OBJECTION

On page 2 lines 3-4 of (ORDER Denying Plaintiff's Motion For Summary Judgment and Granting Defendant's Motion For Summary Judgment) it says: "He" (as in Plaintiff), presented very few argument regarding the actions of the individual defendant.

(g1). In Plaintiff's (Declaration of Michael Luckert for Opposition to Summary Judgment), page 2 lines 20-28 and Page 3 lines 1-28 the Plaintiff is stating that Officer Gutierrez charged Plaintiff on February 26, 2019 with resisting arrest, obstructing/ delaying a peace officer, /EMT, Interfering with a Public agency, Disturbing the peace, possession of a weapon at the Courthouse/public building.

(g2). All charges got dropped "MEANING" I, Michael Luckert, did not (1). Resist / obstruct / delay Peace Officer / EMT. (2). Interfer with Public Agency. (3). Disturb the peace. (4). Possession of a Weapon at the Courthouse / public Building.

What the Plaintiff wants done is for the Judge to "STRIKE" any documents that talk about the above charges that got dropped. Another words if the defence and it's counsel use any of the objection to a ruling or order

page 4 of 11



1 ——— dropped charges to try and defend  
 2 themselves. Or just trying to make me,  
 3 Michael Luckert, look bad with case's ———  
 4 that are not even true And did not get  
 5 convicted of. So how you going to make a case  
 6 ——— built off of things I never got  
 7 convicted of.

8 (h). OBJECTION

9 on page 2 of Document 179, Lines 3-4 it  
 10 says "He presented very few arguments regarding  
 11 the actions of the individual defendant; Specifically  
 12 about switching defendants when we were  
 13 in the discovery Phase."

14 (h.1). The reason I switched Police  
 15 officers in this law suit, (19-08240-PJH),  
 16 was because my face was always in the  
 17 ground and or pushed forward so I could not  
 18 see what officer did what to me.

19 So when I got the police incident report  
 20 I match it up with what police officer  
 21 I felt did the excessive force. Because  
 22 from the way the incident report went  
 23 I could tell what officer was around me,  
 24 Michael Luckert. ——— Plus

25 This one document called Amended Complaint,  
 26 (Document 7, Filed 01-27-20, page 10, lines  
 27 2-8, it says: "At all times in the Amended  
 28 Statement of claim Complaint any Deputy/

objection to a ruling or order

page 5 of 11

1 Sheriff/ building grounds Patrol may take the  
 2 Place of any other Deputy/Sheriff/building grounds  
 3 Patrol in this amended statement of claims (complaint).  
 4 OR names may be added. Do to camera/video  
 5 Surveillance, discovery and in the interest of Justice.  
 6 Now I hope the Judge and the defence see  
 7 how important it is to preserve Body Cameras,  
 8 Video Surveillance. Which the defendant.  
 9 Police officer Gutierrez and the San Francisco  
 10 Police department need to be brought to  
 11 Justice For destroying, writing over Body  
 12 Cameras.

### 13 14 OBJECTION

15  
 16 (1). document 179, Filed 03/03/25, Page 1,  
 17 Line 23-24 it says "but what is relevant for  
 18 the instant motion were the allegations that  
 19 defendant Gutierrez injured plaintiff's wrists  
 20 at the library." Plaintiff's left and right hand,  
 21 wrist, Finger's.  
 22 (1.a), Document 175, Filed 12/16/24 (Declaration  
 23 of Michael Luckert For Opposition To Summary  
 24 Judgment), pages 2 and 3). AS far as the  
 25 Court Clerk's stamp is on top. This  
 26 Declaration of Michael Luckert is all about  
 27 Defendant Gutierrez injuring plaintiff's  
 28 wrist at the library. Specially Page 2,  
 objection to a ruling or order  
 page 6 of 11

1 Lines 26-28, AND page 3, Lines 1-10, were  
 2 it says "I was brought to the San Francisco  
 3 county main library Security Building  
 4 ground Patrol office. I did not know exactly  
 5 what officer at the building grounds  
 6 security office at the main library was  
 7 responsible for applying pressure to my  
 8 handcuffed hands until I read the  
 9 Declaration's of each officer at the scene  
 10 of this particular incident. Only (1) officer  
 11 in the building grounds security office  
 12 applied pressure to my handcuffed wrists.  
 13 And in (Officer Gutierrez Declaration) he is  
 14 admitting to applying pressure to my wrist  
 15 at the building grounds security office  
 16 at the main library in San Francisco."

17 Lines 20-21 "These officers that applied  
 18 pressure to my handcuffed wrists  
 19 injured me

20 (i.b) These injuries were not de minimus.  
 21 The Police Officer Gutierrez put too much pressure  
 22 on my right wrist. Pushing it passed what it  
 23 will bend. Injuring Plaintiff. And according to  
 24 the medical documents my right hand and left  
 25 wrist & fingers, hand were still injured and was not  
 26 de minimus. On 3/1/19 in Document 175-1, Filed  
 27 12/16/24, page 19 it states "Contusion of hand,  
 28 unspecified laterality.

objection to a ruling or order

1 (I.C) Document 175-1, Filed 12-16-24, Page 37,  
 2 EXHIBIT 1.I, Page 326 of the medical  
 3 report says "soft tissue injury / sprain on  
 4 bilateral hands. This was on 3-1-2019."  
 5

6 (I.D) 3-15-19 In Document 175-1, Filed 12-16-24,  
 7 page 37 it also states after 2 1/2 week that  
 8 "Finally my right hand swelling went down" No  
 9 "noted swelling on R hand" but I was still  
 10 in Pain. (This is a lot of Pain and suffering).  
 11

12 (I.E) Officer Gutierrez have caused me  
 13 Pain and suffering From the incident at the  
 14 library injuring both right and left hand  
 15 Finger, wrist. Causing me Pain and suffering  
 16 For months, as the Exhibit -(I.J), Zuckerberg  
 17 San Francisco General Hospital will show.  
 18

19 (I.F) in Document 179, Filed 03/03/25, Page  
 20 4, Lines 8 - 10 it states "Ochoa approached  
 21 Plaintiff, who was visibly agitated and acting  
 22 erratically and took up an aggressive stance."  
 23 I, Michael Luckert, did not take up a aggressive  
 24 stance, which is irrelevant because Gutierrez  
 25 is the defendant not Ochoa and Smith. And  
 26 the time were are talking about is the time  
 27 at the Main Library in the Building grounds Patrol  
 28 Office that Officer Gutierrez injured me the  
 objection to a ruling or order



1 First time.

2

3 (1.G). Document 179, Filed 03/03/25, page 5,  
4 line 1, it states "Gutierrez applied minimal  
5 pressure and found a knife."

6 Gutierrez is lying. The officers did not  
7 find a knife on me until I, Michael Luckert,  
8 was in the transportation van. The officer  
9 asked me if I had anything else in my pockets  
10 and I said "yes". And I reached in my pocket  
11 and gave the legal knife to the officer.  
12

13 (1.H). Document 179, Filed 03/03/25, page 6,  
14 line 5 and 6 it states "Gutierrez Decl. ¶ 9.

15 Before, being placed in the holding cell, Gutierrez  
16 again searched plaintiff by applying a tear wrist  
17 lock on plaintiff with minimal pressure."

18 This incident when Gutierrez again injures  
19 Michael Luckert was in the safety cell with  
20 Deputy Mendoza. This tear wrist lock was not  
21 de minimus. Gutierrez push my wrist past the  
22 point that it moves injuring plaintiff.

23 Please refer to this Document, Objection  
24 to a Ruling or ORDER, page 7, lines 20-28  
25 and page 8, lines 1-17. With the sprained  
26 wrist's, And swelling of both hands until  
27 2 1/2 week later. Then for month I still

28 was in pain as the medical documents will  
objection to a ruling or ORDER page 9 of 11



1 Explain.

2  
3 (1.I), Document 179 Filed 03/03/25,  
4 page 6, line 11, 12. it states "when asked if he was  
5 injured or had any wounds, plaintiff answered  
6 in the negative.

7 This is not how the question above was  
8 asked. The question the Police asked me  
9 was. Do I have any life threatening injuries?  
10 Which I said "no". The questions are  
11 not the same.

12  
13 (1.J) Document 179 Filed 03/03/25,  
14 page 8, line 3-5 says "plaintiff attempted to  
15 alter his allegations regarding events at the  
16 Jail, He argues that the initial search at  
17 the holding cell of the Jail by defendant  
18 actually occurred later during the incident in  
19 the Safety cell.

20 IF YOU READ MY DOCUMENTS FROM THE  
21 BEGINNING AMENDED COMPLAINT TILL NOW THE  
22 JUDGE AND DEFENDANT WILL SEE I HAVE  
23 BEEN SAYING THIS WHOLE TIME THAT IT HAPPENED  
24 IN THE SAFETY CELL. THESE INCIDENT LIKE  
25 THIS IS WHY BODY CAMERAS AND VIDEO SURVEILLANCE  
26 ARE SO IMPORTANT, SO THAT WE CAN TELL A LIE  
27 FROM THE TRUTH. LINES 15, 16 IT SAYS "UNDISPUTED  
28 THAT DEFENDANT WAS NOT INVOLVED IN THE RELEVANT  
objection to a ruling or order

Page 10 of 11

1 it was at the jail.

2  
3 (I.K) The burden is on OFFICER Gutierrez  
4 to show that Gutierrez did not use  
5 excessive force on me, Michael Luckert, by  
6 presenting the body camera footage.

7 And the immunity thing is off the table  
8 because officer Gutierrez broke the law  
9 and committed excessive force.

10 (I.K) I also object to Brian Mendoza ~~for~~ committing  
11 excessive force so on with appeal

12 RELIEF

13 (1). The remaining defendant officer  
14 Gutierrez should at least get a default  
15 judgment in my favor.

16 Date: 3-17-2025

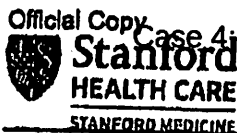
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18 Signature of Attorney in Pro-Se:  
19 Michael Luckert

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objection to a ruling or order page 11 of 11

(EXHIBIT-K)

VALLEY CARE MEDICAL PLEASANTON



Case 4:19-cv-08204-PJH

Document 166

Filed 07/05/24

Page 81 of 168

VALLEYCARE PLEASANTON

Luckert, Michael

5555 W Las Positas Blvd

MRN: 75861773, DOB: 7/12/1969, Sex: M

Pleasanton CA 94588-4000

Visit date: 3/1/2019

**03/01/2019 - Appointment in VCP Diagnostic Radiology****Visit Information****Appointment Information**XR INPATIENT  
3/1/2019 1:00 PM

Completed

Time	Provider	Department	Length
1:00 PM	VCP XR 04	VCP DIAGNOSTIC RADIOLOGY	5 min

Referral Provider: TJOE, ANDREAS

Arrival Time: 12:51 PM

**History**

Made On: 3/1/2019 12:51 PM

Checked In: 3/1/2019 12:51 PM

EOD Status: 3/5/2019 12:11 AM

By: Gill, Italo, RT

RIS

By: Gill, Italo, RT

ES

By: Eod, Processing

ES

**Medication List****Medication List**

Cannot display patient medications because the patient has not yet been checked in.

**Imaging****Imaging****XR Hand 3 Views Right (Final result)****XR Hand 3 Views Right**

Resulted: 03/01/19 1321, Result status: Final result

Ordering provider: Tjoe, Andreas, MD 03/01/19 1236

Order status: Completed

Resulted by: Ye, Xin, MD

Filed by: Shc, In-Radiant Results Multiple Systems 03/01/19 1324

Performed: 03/01/19 1251 - 03/01/19 1311

Accession number: VC14336050

Resulting lab: RADIOLOGY

Narrative:

RADIOGRAPHIC EXAMINATION OF THE BILATERAL HANDS: 3/1/2019 12:55

CLINICAL HISTORY: 49 years of age, Male, pain and swelling following trauma.

COMPARISON: None.

PROCEDURE COMMENTS: 3 views of the bilateral hands.

**FINDINGS:**

There is no visible fracture or malalignment. The joint spaces are preserved. There is regional soft tissue swelling. There is a punctate hyperdensity in the distal left thumb.

**Impression:****IMPRESSION:**

1. No fracture or malalignment.
2. Punctate hyperdensity in the distal left thumb may represent external artifact versus foreign body.

Physician to Physician Radiology Consult Line: (650) 736-1173

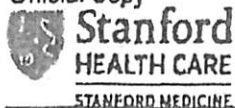
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Page 6

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EXHIBIT-K

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VALLEYCARE PLEASANTON  
5555 W Las Positas Blvd  
Pleasanton CA 94588-4000

Luckert, Michael  
MRN: 75861773, DOB: 7/12/1969, Sex: M  
Visit date: 3/1/2019

03/01/2019 - Appointment in VCP Diagnostic Radiology

## Visit Information

## Appointment Information

XR5INPATIENT  
3/1/2019 12:55 PM

Completed

Time	Provider	Department	Length
12:55 PM	VCP XR 04	VCP DIAGNOSTIC RADIOLOGY	5 min

Referral Provider: TJOE, ANDREAS

Arrival Time: 12:51 PM

## History

Made On:	3/1/2019 12:51 PM	By:	Gill, Italo, RT	RIS
Checked In:	3/1/2019 12:51 PM	By:	Gill, Italo, RT	ES
EOD Status:	3/5/2019 12:11 AM	By:	Eod, Processing	ES

## Medication List

## Medication List

Cannot display patient medications because the patient has not yet been checked in.

## Imaging

## Imaging

## XR Hand 3 Views Left (Final result)

## XR Hand 3 Views Left

Resulted: 03/01/19 1321, Result status: Final result

Ordering provider: TJoe, Andreas, MD 03/01/19 1236  
Resulted by: Ye, Xin, MD

Order status: Completed  
Filed by: Shc, In-Radiant Results Multiple Systems 03/01/19 1324

Performed: 03/01/19 1251 - 03/01/19 1311

Accession number: VC14336047

Resulting lab: RADIOLOGY

## Narrative:

RADIOGRAPHIC EXAMINATION OF THE BILATERAL HANDS; 3/1/2019 12:55

CLINICAL HISTORY: 49 years of age, Male, pain and swelling following trauma.

COMPARISON: None.

PROCEDURE COMMENTS: 3 views of the bilateral hands.

## FINDINGS:

There is no visible fracture or malalignment. The joint spaces are preserved. There is regional soft tissue swelling. There is a punctate hyperdensity in the distal left thumb.

## Impression:

## IMPRESSION:

1. No fracture or malalignment.
2. Punctate hyperdensity in the distal left thumb may represent external artifact versus foreign body.

Physician to Physician Radiology Consult Line: (650) 736-1173

Printed on 3/10/21 8:39 AM

Page 8

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VALLEYCARE PLEASANTON  
5555 W Las Positas Blvd  
Pleasanton CA 94588-4000

Luckert, Michael  
MRN: 75861773, DOB: 7/12/1969, Sex: M  
Adm: 3/1/2019

03/01/2019: ED in VCP Emergency Department

**Reason for Visit****Chief Complaint**

- Hand Swelling (Pt reports injury to bilateral hands by PD both hands and on left wrist swelling pain, bruising, tenderness, redness)

**Visit Diagnoses**

Name: [REDACTED] Is ED? [REDACTED]

Contusion, hand, unspecified laterality, initial encounter (primary) Yes

Contusion, shoulder and upper arm, multiple sites, unspecified laterality, initial encounter Yes

Rib contusion, left, initial encounter Yes

**Visit Information****Admission Information**

Arrival Date/Time:	03/01/2019 1215	Admit Date/Time:	03/01/2019 1217	IP Adm. Date/Time:	
Admission Type:	Emergency	Point of Origin:	Home	Admit Category:	
Means of Arrival:	Police-other	Primary Service:	Emergency	Secondary Service:	N/A
Transfer Source:		Service Area:	STANFORD HEALTH CARE	Unit:	VCP Emergency Department
Admit Provider:		Attending Provider:	Tjoe, Andreas, MD	Referring Provider:	

**Discharge Information**

Discharge Date/Time	Discharge Disposition	Discharge Destination	Discharge Provider	Unit
03/01/2019 1412	Jail Or Prison	Jail	None	VCP Emergency Department

**Follow-up Information**

Follow-up With	Details	Why	Contact Info.
Your doctor			

**Treatment Team**

Provider	Service	Role	Specialty	From	To
Tjoe, Andreas, MD	Emergency Medicine	Attending Provider	Emergency Medicine	03/01/19 1223	03/01/19 1412
Meher, Shannon, RN	—	Registered Nurse	—	03/01/19 1219	—

**Events****ED Arrival at 3/1/2019 1215**

Unit: VCP Emergency Department

**Admission at 3/1/2019 1217**

Unit: VCP Emergency Department	Room: ED16	Bed: 16
Patient class: Emergency Services	Service: Emergency	

**ED Roomed at 3/1/2019 1217**

Unit: VCP Emergency Department	Room: ED16	Bed: 16
Patient class: Emergency Services	Service: Emergency	

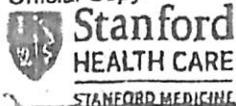
**Discharge at 3/1/2019 1412**

Unit: VCP Emergency Department	Room: ED16	Bed: 16
Patient class: Emergency Services	Service: Emergency	

**Discharge at 3/1/2019 1412**

Unit: VCP Emergency Department	Room: ED16	Bed: 16
Patient class: Emergency Services	Service: Emergency	

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VALLEYCARE PLEASANTON  
 5555 W Las Positas Blvd  
 Pleasanton CA 94588-4000

Luckert, Michael  
 MRN: 75861773, DOB: 7/12/1969, Sex: M  
 Adm: 3/1/2019

3/1/2019 ED in VCP Emergency Department (continued)

Events (continued)

Medication List

Medication List

This report is for documentation purposes only. The patient should not follow medication instructions within.  
 For accurate instructions regarding medications, the patient should instead consult their physician or after visit summary.

Prior To Admission

None

Discharge Medication List

None

Stopped In Visit

None

ED Provider Note

ED Provider Notes by Tjoe, Andreas, MD at 3/1/2019 1:29 PM

Author: Tjoe, Andreas, MD

Filed: 3/1/2019 1:51 PM

Editor: Tjoe, Andreas, MD (Physician)

Service: —

Date of Service: 3/1/2019 1:29 PM

Author Type: Physician

Status: Signed



Stanford  
 HEALTH CARE  
 STANFORD MEDICINE

ValleyCare

Emergency Department  
 Provider Note

Name: Michael Luckert

MRN: 75861773

ED Arrival: 3/1/2019 12:17 PM

Room #: 16

History & Physical

Triage:

Chief Complaint

Patient presents with

• Hand Swelling

Pt reports injury to bilateral hands by PD, both hands are swollen and pt reporting pain diffusely, +csm, +pulses.

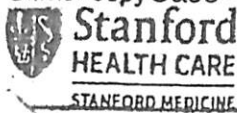
HPI

49 Y male here for medical clearance. Patient said that he was assaulted by the police officers on Tuesday. He said he was beat up. Now has swollen hands bilaterally and right shoulder pain. Denies chest pain. He does have a visible bruise to the left lower rib.

No shortness of breath.

No fevers, cough.

Printed on 3/10/21 8:39 AM



VALLEYCARE PLEASANTON Luckert, Michael  
5555 W Las Positas Blvd MRN: 75861773, DOB: 7/12/1969, Sex: M  
Pleasanton CA 94588-4000 Adm: 3/1/2019

**03/01/2019 - ED In VCP Emergency Department (continued)**

**ED Provider Note (continued)**

**Physical Exam**

**VITAL SIGNS:**

**Visit Vitals:**

03/01/19 1221  
BP: 120/68  
Pulse: 67  
Resp: 20  
Temp: 36.9 °C (98.5 °F)  
TempSrc: Oral  
SpO2: 98%

CONSTITUTIONAL: Well appearing male in NAD, non toxic appearing.

EYES: EOMI, normal conjunctiva, PERRLA

ENT: normal oropharynx with no exudates, moist oral mucosa, normal external ears

NECK: Supple, no vertebral tenderness

CARDIOVASCULAR: Normal S1, S2. Regular rate and rhythm, no murmurs, rubs, or gallops.

RESPIRATORY: normal respiratory effort, clear to auscultation, no wheezing, rales or rhonchi

ABDOMEN: non-distended, soft, non tender, no guarding, no rebound.

MSK: Full range of motions in all extremities, normal gait. Both hands are swollen and the dorsal aspect. Has some excoriations on the fingers

NEURO: normal sensory, motor, normal speech and follows commands appropriately

SKIN: Warm and dry. No rash, lesions.

**Procedures**

**Expand/Collapse Notes**

**Labs & Imaging**

**ED Physician and Radiology Interpretations:**

(For Limited US, complete procedure note)

XR Shoulder 2 Views Right

Final Result

**IMPRESSION:**

1. No acute fracture or malalignment.

Physician to Physician Radiology Consult Line: (650)  
736-1173

Signed



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VALLEYCARE PLEASANTON  
5555 W Las Positas Blvd  
Pleasanton CA 94588-4000

Luckert, Michael  
MRN: 75861773, DOB: 7/12/1969, Sex: M  
Adm: 3/1/2019

03/01/2019 - ED in VCP Emergency Department (continued)

**ED Provider Note (continued)**

XR Hand 3 Views Left

Final Result

**IMPRESSION:**

1. No fracture or malalignment.
2. Punctate hyperdensity in the distal left thumb may represent external artifact versus foreign body.

Physician to Physician Radiology Consult Line: (650)  
736-1173

Signed

XR Hand 3 Views Right

Final Result

**IMPRESSION:**

1. No fracture or malalignment.
2. Punctate hyperdensity in the distal left thumb may represent external artifact versus foreign body.

Physician to Physician Radiology Consult Line: (650)  
736-1173

Signed

**Medical Decision Making**

**Initial Ddx, assessment and plan:** 49-year-old male here for medical clearance status post physical artery locations with police. Hands do show some swelling however x-rays obtained and they are negative. Right shoulder Xray also negative. Motrin for pain. Stable for discharge. Medically cleared

**ED Treatment:**

Labs ordered:

None

Medications

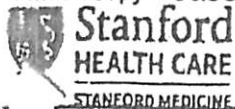
Ibuprofen (MOTRIN) tablet 600 mg (600 mg Oral Given 3/1/19  
1336)

Consults ordered:

None

**Clinical Decision Rules**

Printed on 3/10/21 8:39 AM



VALLEYCARE PLEASANTON Luckert, Michael  
5555 W Las Positas Blvd MRN: 75861773, DOB: 7/12/1969, Sex: M  
Pleasanton CA 94588-4000 Adm: 3/1/2019

03/01/2019 - ED In VCP Emergency Department (continued)

## ED Provider Note (continued)

## ED Course, Data Review &amp; Interpretation:

## Disposition:

## Diagnosis:

Contusion of hand, unspecified laterality, initial encounter

Contusion, shoulder and upper arm, multiple sites, unspecified laterality, initial encounter

Rib contusion, left, Initial encounter

## Disposition: Discharge

Admitting Attending: No admitting provider for patient encounter.

OR

Follow up: Your doctor

## New Prescriptions

No medications on file

## Expand/Collapse Notes

## Critical Care

Not applicable

Electronically signed by Tjoe, Andreas, MD at 3/1/2019 1:51 PM

## ED Notes

## ED Notes by Montano, Briana, RN at 3/1/2019 2:07 PM

Author: Montano, Briana, RN

Service: ---

Author Type: Registered Nurse-ED

Filed: 3/1/2019 2:08 PM

Date of Service: 3/1/2019 2:07 PM

Status: Signed

Editor: Montano, Briana, RN (Registered Nurse-ED)

Discussed with case management, patient cleared for discharge.

Electronically signed by Montano, Briana, RN at 3/1/2019 2:08 PM

## ED Care Timeline

## Patient Care Timeline (3/1/2019 12:15 to 3/1/2019 14:12)



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VALLEYCARE PLEASANTON Luckert, Michael  
5555 W Las Posillas Blvd MRN: 75861773, DOB: 7/12/1969, Sex: M  
Pleasanton CA 94588-4000 Adm: 3/1/2019

03/01/2019 ED in VCB Emergency Department (continued)

ED Care Timeline (continued)

3/1/2019	Event	Details	User
12:15	Patient arrived in ED		Achalagua, Jenesis
12:15:28	Emergency encounter created		Achalagua, Jenesis
12:15:55	Arrival Complaint	medical clearance	
12:17:23	Patient roomed in ED	To room ED16	Koon, Donna, RN
12:19	Triage Start	Triage Start Triage Start: STARTING TRIAGE	Maier, Shannon
12:18:28	Assign Nurse	Maier, Shannon, RN assigned as Registered Nurse	Maier, Shannon
12:19:48	Triage Started		Maier, Shannon
12:21	Initial Questions	Treatment PTA Treatment PTA: Ice	Maier, Shannon
12:21	Vitals	Pain Assessment Pain Scale Instruction: Yes Pain Level - 1st Site: 7 Does Patient have Chronic Pain: No Pain - 1st Site Pain Level - 1st Site: 7 Pain Orientation - 1st Site: R Pain Location - 1st Site: Hand Pain Description - 1st Site: At Rest; Aching Pain Intervention - 1st Site: Ice/Cold Pack Does the patient have an additional pain location?: Yes Pain - 2nd Site Pain Orientation - 2nd Site: L Pain Location - 2nd Site: Hand Pain Description - 2nd Site: At Rest; Aching Pain Intervention - 2nd Site: Ice/Cold Pack Vitals BP: 120/68 Mean Arterial Pressure (Calculated): 85 mmHg Temp: 36.9 °C (98.5 °F) Temp Source: Oral Pulse: 67 Resp: 20 SpO2: 98 % O2 Delivery: RA	Maier, Shannon
12:21	Custom Formula Data	Relevant Labs and Vitals Temp (in Celsius): 36.9 Pain 1st Site (RN Documented) Pain Orientation: R (RN Documented) Pain Location: Hand Pain 2nd Site (RN Documented) Pain Orientation 2nd Site: L (RN Documented) Pain Location 2nd Site: Hand	Maier, Shannon
12:21:07	Chief Complaints Updated	Hand Swelling (Pt reports injury to bilateral hands by PD, both hands are swollen and pt reporting pain diffusely, +cam, +pulses.)	Maier, Shannon
12:21:28	Allergies Reviewed		Maier, Shannon

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**Stanford**  
**HEALTH CARE**

STANFORD MEDICINE

VALLEYCARE PLEASANTON  
5555 W Las Positas Blvd  
Pleasanton CA 94588-4000

Luckert, Michael  
MRN: 75861773, DOB: 7/12/1969, Sex: M  
Adm: 3/1/2019

03/01/2019 ED in VCP Emergency Department (continued)

**ED Care Timeline (continued)**

12:52	Infection Screening	Infection Screening Have you had/ever had a previous infection?: No Tuberculosis (TB) symptom(s) present: None Current or recent tuberculosis diagnosis and/ or on TB medication : No or not applicable Active diarrhea in the previous 48 hours: No or N/A Skin problems on assessment: None Influenza like symptoms: None Within the preceding 6 months patient traveled outside of the United States or immigrated to the United States: No	Maier, Shannon
12:52	Custom Formula Data	Pain 1st Site (RN Documented) Pain Orientation: L (RN Documented) Pain Location: Hand <del>Pain 2nd Site (RN Documented) Pain Orientation: R (RN Documented) Pain Location: Hand</del>	Maier, Shannon
12:52:01	Imaging Exam Started	XR Hand 3 Views Right	Gill, Halo, RT
12:52:11	Imaging Exam Started	XR Shoulder 2 Views Left	Gill, Halo, RT
12:53	Triage Plan	Room Precaution Patient Meets Criteria for Isolation: Not applicable Triage Destination Patient ESJ Level: 4 Destination: Emergency Department	Maier, Shannon
12:53	Initial Questions	Treatment PTA Treatment PTA: Ice Domestic Abuse Screening Because difficult relationships can cause health problems, we are asking all of our patients the following question: Does a partner, or anyone at home, hurt, hit, or threaten you or take advantage of you financially?: Patient answers "No" Does RN have reason to believe a Social Work Consult is needed to assess abuse or neglect risk?: No Risk of Suicide <del>Do you feel down, depressed, or hopeless? Yes</del> (Revised) Suicide Rating Scale: Columbia-Suicide Severity Rating Scale (C-SSRS) Do you wish you were dead or have you had thoughts of killing yourself?: No	Maier, Shannon
12:53	Intervention(s)	Intervention(s) Intervention(s): Ice	Maier, Shannon
12:53:03	Pain reassessment completed		Maier, Shannon
12:53:08	Allergies Reviewed		Maier, Shannon
12:54	STAMP Assessment	STAMP Assessment STAMP Assessment: None at present time	Maier, Shannon
12:54:06	Triage Completed		Maier, Shannon

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Case 4:19-cv-08204-PJH Document 175-1

Filed 12/16/24 Page 26 of 98

**Stanford**  
**HEALTH CARE**

STANFORD MEDICINE

VALLEYCARE PLEASANTON  
5555 W Las Positas Blvd  
Pleasanton CA 94588-4000Luckert, Michael  
MRN: 75861773, DOB: 7/12/1969, Sex: M  
Adm: 3/1/2019

03/01/2019 - ED In VCP Emergency Department (continued)

**ED Care Timeline (continued)**

13:24:14	Imaging Result	XR Hand 3 Views Left	Shc, In-Radiant Results Multiple Systems
13:31:30	XR Shoulder 2 Views Right Resulted	Collected: 3/1/2019 13:29 Last updated: 3/1/2019 13:34 Status: Final result	Shc, In-Radiant Results Multiple Systems
13:31:35	Orders Acknowledged	New: Ibuprofen (MOTRIN) tablet 600 mg	Maier, Shannon
13:31:45	History Reviewed	Sections Reviewed: Medical, Surgical, Family, Tobacco, Alcohol, Drug Use, Custom	Tjoe, Andreas, MD
13:34:35	Imaging Result	XR Shoulder 2 Views Right	Shc, In-Radiant Results Multiple Systems
13:35:08	Home Medications Reviewed		Maier, Shannon
13:36	Medication Given	Ibuprofen (MOTRIN) tablet 600 mg - Dose: 600 mg ; Route: Oral ; Scheduled times: 4:17	Maier, Shannon
13:51	Patient/Care Giver/ MSE	Medical Screen Exam Medical Screen Exam: I have performed a medical screening examination on this patient and no emergency medical condition exists at this time	Tjoe, Andreas, MD
13:51:46	Discharge Disposition Selected	ED Disposition set to Discharge	Tjoe, Andreas, MD
13:51:46	Disposition Selected		Tjoe, Andreas, MD
13:51:50	ED Provider Notes	Note filed at this time	Tjoe, Andreas, MD
13:51:50	ED Attending Note Signed	ED Prov Note filed by Tjoe, Andreas, MD	Tjoe, Andreas, MD
14:01	Homeless Discharge Checklist	Homeless Discharge Checklist - Nursing Documentation The homeless patient has been offered a meal: Yes The homeless patients has been offered weather-appropriate clothing: Yes	Maier, Shannon
14:02:57	AVS Printed		Maier, Shannon
14:02:58	AVS Printed		Maier, Shannon
14:02:58	AVS Printed	ED Additional Information Jail/Medical Screening Examination Letter	Maier, Shannon



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VALLEYCARE PLEASANTON Luckert, Michael  
 5555 W Las Positas Blvd MRN: 75861773, DOB: 7/12/1969, Sex: M  
 Pleasanton CA 94588-4000 Adm: 3/1/2019

03/01/2019 ED to HSA Emergency Department (continued)

ED Care Timeline (continued)

14:04	Homeless Discharge Checklist	<b>Homeless Discharge Checklist - Nursing Documentation</b> The physician or designee has communicated post-discharge medical needs to the homeless patient: Yes The homeless patient has been provided with a prescription, if needed: N/A The homeless patient has been offered or referred to screening for infectious disease: Yes The homeless patient has been offered vaccinations appropriate to the homeless patient's presenting medical condition: N/A <b>Homeless Discharge Checklist - Social Work Documentation</b> The homeless patient has been referred to a source of follow-up care, if medically necessary: Yes The hospital has offered the homeless patient transportation after discharge to a maximum travel time of 30 minutes or a maximum travel distance of 30 miles of the hospital: N/A Reason patient was not offered transportation, or not applicable: in custody The homeless patient has been provided with a medical screening examination and evaluation. At this time, follow-up behavioral health care is: Not clinically indicated The homeless patient has been screened for, and provided assistance to enroll in, any affordable health insurance coverage for which he or she is eligible: Yes The homeless patient has been referred to homeless shelters: N/A	Maier, Shannon
14:07:41	ED Notes	Discussed with case management, patient cleared for discharge.	Montano, Briana, RN
14:09	Transfer Disposition	E - Vitals (15 min before transfer) Pulse: 70 Resp: 18 BP: 125/87	Severance, Susan, RN
14:09	Custom Formula Data	Hemodynamics Mean Arterial Pressure (Calculated): 100 mmHg	Severance, Susan, RN
14:10	Patient Discharge	<b>Patient Discharge</b> Reassessment of Chief Complaint: discharged in US Marshall custody Patient Teaching: Discharge Instructions reviewed Discharge Mode: Ambulatory Accompanied by: Law Enforcement Discharge Transportation: Law Enforcement <b>Patient Discharge</b> Discharge AMA: No	Severance, Susan, RN
14:12	Patient discharged		Severance, Susan, RN
14:12:14	Patient Summary Extract Created		Severance, Susan, RN

Imaging

Imaging

XR Hand 3 Views Left (Final result)

XR Hand 3 Views Left

Ordering provider: Tjoe, Andreas, MD 03/01/19 1236  
 Resulted by: Ye, Xin, MD

Performed: 03/01/19 1251 - 03/01/19 1311  
 Resulting lab: RADIOLOGY  
 Narrative:

Resulted: 03/01/19 1321, Result status: Final result

Order status: Completed  
 Filed by: Shc, In-Radiant Results Multiple Systems 03/01/19 1324  
 Accession number: VC14336047

Official Copy



VALLEYCARE PLEASANTON  
5555 W Las Positas Blvd  
Pleasanton CA 94588-4000

Luckert, Michael  
MRN: 75861773, DOB: 7/12/1969, Sex: M  
Adm: 3/1/2019

03/01/2019 - ED In VCR Emergency Department (continued)

**Imaging (continued)**

**RADIOGRAPHIC EXAMINATION OF THE BILATERAL HANDS 3/1/2019 12:55**

**CLINICAL HISTORY:** 49 years of age Male patient sustaining following trauma:

**COMPARISON:** None.

**PROCEDURE COMMENTS:** 3 views of the bilateral hands.

**FINDINGS:**

There is no visible fracture or malalignment. The joint spaces are preserved. There is regional soft tissue swelling. There is a punctate hyperdensity in the distal left thumb.

**Impression:**  
**IMPRESSION:**

1. No fracture or malalignment.
2. Punctate hyperdensity in the distal left thumb may represent external artifact versus foreign body.

Physician to Physician Radiology Consult Line: (850) 736-1173

Signed

**Testing Performed By**

Lab - Abbreviation	Name	Director	Address	Valid Date Range
13 - RIS	RADIOLOGY	Unknown	Unknown	11/22/10 0854 - Present

**XR Hand 3 Views Left**

Resulted: 03/01/19 1251, Result status: In process

Ordering provider: Tjoe, Andreas, MD 03/01/19 1236  
Resulted by: Ye, Xin, MD  
Performed: 03/01/19 1251 - 03/01/19 1311  
Resulting lab: RADIOLOGY

Order status: Completed  
Filed by: Gill, Italo, RT 03/01/19 1251  
Accession number: VC14336047

**Testing Performed By**

Lab - Abbreviation	Name	Director	Address	Valid Date Range
13 - RIS	RADIOLOGY	Unknown	Unknown	11/22/10 0854 - Present

Signed

Electronically signed by Ye, Xin, MD on 3/1/19 at 1321 PST

**XR Hand 3 Views Right (Final result)**

**XR Hand 3 Views Right**

Resulted: 03/01/19 1321, Result status: Final result

Ordering provider: Tjoe, Andreas, MD 03/01/19 1236  
Resulted by: Ye, Xin, MD  
Performed: 03/01/19 1251 - 03/01/19 1311  
Resulting lab: RADIOLOGY

Order status: Completed  
Filed by: Shc, In-Radiant Results Multiple Systems 03/01/19 1324  
Accession number: VC14336050

Negative

**RADIOGRAPHIC EXAMINATION OF THE BILATERAL HANDS 3/1/2019 12:55**

**CLINICAL HISTORY:** 49 years of age Male patient sustaining following trauma:





Stanford  
HEALTH CARE

STANFORD MEDICINE

VALLEYCARE PLEASANTON  
5555 W Las Positas Blvd  
Pleasanton CA 94588-4000

Luckert, Michael  
MRN: 75861773, DOB: 7/12/1969, Sex: M  
Adm: 3/1/2019

03/01/2019 ED in VCP Emergency Department (Right Hand)

Imaging (continued)

COMPARISON: None.

PROCEDURE COMMENTS: 3 views of the bilateral hands.

FINDINGS:

There is no visible fracture or malalignment. The joint spaces are preserved. There is regional soft tissue swelling. There is a punctate hyperdensity in the distal left thumb.

Impression:  
IMPRESSION:

1. No fracture or malalignment.
2. Punctate hyperdensity in the distal left thumb may represent external artifact versus foreign body.

Physician to Physician Radiology Consult Line: (650) 736-1173

Signed

Testing Performed By

Lab - Abbreviation	Name	Director	Address	Valid Date Range
13 - RIS	RADIOLOGY	Unknown	Unknown	11/22/10 0854 - Present

XR Hand 3 Views Right

Ordering provider: Tjoe, Andreas, MD 03/01/19 1236  
Resulted by: Ye, Xin, MD  
Performed: 03/01/19 1251 - 03/01/19 1311  
Resulting lab: RADIOLOGY

Resulted: 03/01/19 1252, Result status: In process  
Order status: Completed  
Filed by: Gill, Italo, RT 03/01/19 1252  
Accession number: VC14336050

Testing Performed By

Lab - Abbreviation	Name	Director	Address	Valid Date Range
13 - RIS	RADIOLOGY	Unknown	Unknown	11/22/10 0854 - Present

Signed

Electronically signed by Ye, Xin, MD on 3/1/19 at 1321 PST

XR Shoulder 2 Views Right (Final result)

XR Shoulder 2 Views Right

Ordering provider: Tjoe, Andreas, MD 03/01/19 1236  
Resulted by: Ye, Xin, MD

Resulted: 03/01/19 1331, Result status: Final result  
Order status: Completed  
Filed by: Shc, In-Radiant Results Multiple Systems 03/01/19 1334  
Accession number: VC14336052

Performed: 03/01/19 1252 - 03/01/19 1311  
Resulting lab: RADIOLOGY

Narrative:

RADIOGRAPHIC EXAMINATION OF THE SHOULDER: 3/1/2019 13:05

CLINICAL HISTORY: 49 years of age, Male, pain following assault.

COMPARISON: None.

PROCEDURE COMMENTS: 3 views of the right shoulder.

Printed on 3/10/21 8:39 AM

Official Copy


**Stanford**  
**HEALTH CARE**

STANFORD MEDICINE

 VALLEYCARE PLEASANTON  
 5555 W Las Positas Blvd  
 Pleasanton CA 94588-4000

 Luckert, Michael  
 MRN: 75861773, DOB: 7/12/1969, Sex: M  
 Adm: 3/1/2019

03/01/2019 - ED In VCP Emergency Department (continued)

## Medication Administrations (continued)

Frequency: ONCE

Admin Instructions: Give with food or milk.

Rate/Duration: -- / --

This drug is associated with a BLACK BOX WARNING. Click on the blue hyperlink below to review the details.

Timestamps	Action	Dose	Route	Other Information
Performed 03/01/19 1336	Given	600 mg	Oral	Performed by: Maher, Shannon
Documented: 03/01/19 1336				

## Other Orders

## Medications

## IBUPROFEN 200 MG PO TABS (Active)

Electronically signed by: In-Medication Dispense From Medselect on 03/01/19 1332

Ordering user: In-Medication Dispense From Medselect 03/01/19 1332

Status: Active

Frequency: 03/01/19 1332 - Until Discontinued

Admin Instructions: SHANNON MAHER: cabinet override

This drug is associated with a BLACK BOX WARNING. Click on the blue hyperlink below to review the details.

Medication comments: SHANNON MAHER: cabinet override

Package: D904-7914-61

## Ibuprofen (MOTRIN) tablet 600 mg (Completed)

Electronically signed by: TJoe, Andreas, MD on 03/01/19 1316

Ordering user: TJoe, Andreas, MD 03/01/19 1316

Authorized by: TJoe, Andreas, MD

Frequency: STAT Once 03/01/19 1317 - 1 occurrence

Acknowledged: Maher, Shannon 03/01/19 1331 for Placing Order

Admin Instructions: Give with food or milk.

This drug is associated with a BLACK BOX WARNING. Click on the blue hyperlink below to review the details.

Package: D904-7914-61

Ordering provider: TJoe, Andreas, MD

Ordering mode: Standard

Class: E-Prescribe

Status: Completed

## Flowsheets

## Advance Directive and POLST

Row Name 03/01/19 1238

## Advance Directive

Does patient have an Advance Directive? No

Would the patient like to establish an Advance Directive? Patient offered information but not Interested

## Custom Formula Data

Row Name 03/01/19 1409 03/01/19 1257 03/01/19 1252 03/01/19 1221

## Relevant Labs and Vitals

Temp (in Celsius) — — — 36.9

Pain 1st Site

(EXHIBIT-L)

DISPOSITION OF ALL CHARGES DROPPED

REPORT 6789  
BUCKERT/MICHAEL

Q C X

RUN 06/18/20 @ 10-26 PAGE 1

) CTM 19003201 SCN  
) SENO S473075 INCN 191437788  
) JAIL#19662795 W/M DOB 071269

DEFSTATUS COJ1 ) MCN STRKS CELL

JAILST 022719/1849 ) OPLIC

ARREST DATE

KEY DATES

ARREST DATE

REBOOK

) BRCN

PSR

PROBSTAT

) BW /

PCD

SETHAIL \$

) INTR

SCHEDULED ON CALENDAR

022719/0900 M97 AM

\* KK006845 BKD 148(A)1PC /M NOW 148(A)1PC /M RESIST/OBST/DLY PEACE QPCR/EMT

COUNT

PLEA

DISM 29

\* KK006846 BKD 602,1(B)PC/M NOW 602,1(B)PC/M INTERFERE PUBLIC AGENCY

COUNT

PLEA

DISM 29

\* KK006847 BKD 415PC /M NOW 415PC /M DISTURBING PEACE

COUNT

PLEA

DISM 29

\* KK006848 BKD 171B(A)PC /M NOW 171B(A)PC /M POSS WEARN COURTHOUSE/PUB BLDG

COUNT

PLEA

DISM 29

MSG WAITING

(EXHIBIT <sup>ML</sup> L), Disposition sheet  
OF all charges dropped

**FILED**  
**RECEIVED**

JAN 27 2020

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTH DISTRICT OF CALIFORNIA

1 Michael Landon Luckert # 190-143-778  
2 SANTA RITA JAIL  
3 5325 BRIDGE STREET  
4 DUBLIN, CA 94568

5  
6 ATTORNEY FOR PLAINTIFF / IN PRO PER: Michael Luckert

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 MICHAEL LANDON LUCKERT  
11 Plaintiff,

12 VS.  
13 San Francisco Police Department  
14 Officer's / Deputy Sheriff's; D. SMITH #

15 2275, Fox # 2224, LENA # 56  
16 Gutierrez # 1928, Brule #

17 2005, Espinoza # 1952, Mendez #  
18 334, Mercado # 1952, Building

19 Patrol Anthony P. Rocha  
20 Defendants,

21 I, Due to process and I, Michael Luckert just getting  
22 the police incident report # 190-143-778. I AM putting  
23 these officers on notice. To be Added as defendants. FRCP, Rule  
24 15(c)(2). And Also the Related back of Amendment, FRCP, Rule  
25 15(c)(1). When I stated "other officers to be determined in my  
26 original complaint under the Civil Rights Act.  
27 42 U.S.C. 1983 Title 28, Sec 17 2019).  
28

Page 1 of 9

**EXHIBIT M** NOTICE TO UNITED STATES OFFICERS TO BE ADDED AS  
DEFENDANTS BY AMENDMENT AND AMENDED STATEMENT OF CLAIM  
COMPLAINT



SAN FRANCISCO POLICE DEPARTMENT OFFICERS AND  
PATROL / SECURITY TO BE ADDED AS DEFENDANTS

1. All defendants are being sued in their individual capacity unless later on in discovery through policies and procedures

I find out that the officials/supervisors broke their own policies and procedures. Then I will sue at that time in the official capacity.

2. All defendants listed in this Notice to United States officers to be added as defendants are in the Police Incident report # 190-143-778. Which I now have in my possession and is in (EXHIBIT A.B.C.D). At this time I would like to proceed with the alleged excessive force.

3. These officers either were involved in the excessive force or just stood around and watched the pain and suffering continue.

4. With more discovery of evidence we will see through audio/video surveillance and body cameras, photos and documentation the preponderance of evidence. Causing the pain and suffering. Violating the 8th Amendment.

5. All charges in incident report # 190-143-778 that San Francisco Police officers/security have charged me with have been dropped/dismissed and is not even a probation violation.

PARTIES

1. Plaintiff, Name and Present Address:

Michael Landon Luckert, 5325 Broder Blvd, Dublin, CA 94568

2. Defendants, provide Full name, official position

1 and Place of employment:

2	Full NAME	Official Position	Place of employment
3	LENA # 56	Deputy/Officer	San Francisco County
4	D. SMITH # 2275	Deputy Sheriff	San Francisco County
5	Gutierrez # 1928	Deputy	San Francisco County
6	Brule # 3005	Deputy	San Francisco County
7	Espiritu # 1952	Deputy	San Francisco County
8	Mendoza # 2324	Deputy	San Francisco County
9	Mercedo # 1982	Supervisor	San Francisco County
10	Anthony P. Ochoa	Officer / <sup>Building</sup> grounds Patrol	SAN Francisco County Main Library
11	FOX # 2224	Deputy/Officer	San Francisco County

12 Amended Statement of Claim

13 Complaint FRC P. 15(c)(1)(A)(B)(C)(i) And (ii)

15 1. On February 26, 2019, (Incident Report # 140-145-778)

16 I was arrested by San Francisco Police officer: D. Smith #

17 #2275. In (EXHIBIT-A), page 2, 2nd paragraph, D. Smith

18 #2275 stated: "Building grounds Patrol officers and I

19 were able to secure Luckert into handcuffs". In (EXHIBIT

20 B.), Highlighted area, - show that he, Anthony. P Ochoa,

21 Building grounds Patrol, was responsible also for

22 escorting me to the Building grounds Patrol Office. By

23 his own statement when he states, "I began assisting

24 deputy Smith in detaining the Patron" and "Once under control,

25 the patron was brought to the Security Office to be

26 processed. Because of these statements I am lead to

27 believe that D. Smith #2275 and Building ground Patrol,

28 Anthony P. Ochoa escorted me from the time of arrest

Notice to Unrepresented Parties to be added as defendants page 3 of 9  
by Amendment. And Amended Statement of Claim Complaint

1 on the 6th Floor of the main Library in San Francisco to  
2 the Building grounds Patrol office. So at this time officer  
3 D. Smith #2275 grabbed my hand and twisted it behind  
4 my back, And hand cuffed me. Then building grounds  
5 Patrol, Anthony P. Ochoa got on the other side of me  
6 to escort me to the Building grounds Patrol office.  
7 At this time D. Smith #2275 and building grounds Patrol,  
8 Anthony P. Ochoa twist my wrists. Bending them up. Then  
9 they picked me up by my handcuffed hands and pulled me  
10 Forward. So as I could not walk on my own. About this time  
11 I started to scream,ouch stop. This behavior by Anthony  
12 P. Ochoa AND Deputy D. Smith #2275 continued all the way  
13 down to the building grounds Patrol office. Causing my wrists  
14 to be pulled out of Joint and my wrists to swell. The only  
15 resistance I gave was to my handcuffed wrists in  
16 straightening them out. So as these officers would not  
17 brake my wrists. This malicious and sadistic behavior by  
18 these officers has caused me extreme pain and suffering.  
19 From the time of the arrest all the way to building grounds  
20 Patrol office.

21 2. While in building grounds Patrol office at the main  
22 library in San Francisco you will see in (EXHIBIT-A), Page  
23 2, 3rd Paragraph, when D. Smith #2275 states, "I went  
24 over the radio on 50-A16 to advise Deputy Gutierrez to  
25 meet me in the office. Deputy Gutierrez #1928, Brule #  
26 2005 and Espiritu #1952 arrived on scene, that these  
27 were the officers present. At this point in the excessive  
28 Force while we were in the building grounds Patrol office

Page 4 of 9

~~AMENDED statement of claim complaint~~

1 D. Smith #2275 was on one side of me. In (EXHIBIT B)  
2 Second Paragraph, Highlighted area, Anthony P. Ochoa,  
3 Building grounds Patrol/Security, States, "while the  
4 Deputy's and Security attempted to detain him to the  
5 Bench." So with these statements, I am lead to believe  
6 that, D. Smith #2275, Gutierrez #1928, Brule #2005,  
7 Espiritu #1952 and Building ground Patrol/Security;  
8 Anthony P. Ochoa were the officers responsible for  
9 the excessive force that took place in the building  
10 grounds Patrol Office. These officers maliciously  
11 and sadistically with violence that was unnecessary,  
12 pushed me to the bench and floor twisting my wrists,  
13 causing me pain and suffering. And my wrists to  
14 swell even more. At this point I am screaming such, stop.  
15 Deputy's: D. Smith #2275, Gutierrez #1928, Brule #  
16 2005, Espiritu #1952 and Building ground patrol/security,  
17 Anthony P. Ochoa either helped with the excessive force  
18 or just stood around while other deputy's took there  
19 place. I hold them all responsible for the excessive  
20 force because either they helped with the excessive  
21 force or just stood around letting the pain and  
22 suffering to continue. Through out this whole  
23 incident I am handcuffed with my hands behind my  
24 back.

25 3, In (EXHIBIT A), paragraph 5, D. SMITH #2275, states  
26 "Deputy Gutierrez and Deputy B. Mendoza #2324  
27 transported Luckert to County Jail #1. So Deputy  
28 Gutierrez #1928 and Deputy B. Mendoza #2324

Page 5 of 9

AMENDED STATEMENT OF CLAIM COMPLAINT



1 transported me to San Francisco County Jail. Deputy:  
2 Gutierrez #1925 and Mendoza #2324 are responsible for  
3 throwing me in a cell while handcuffed. Rolling me over  
4 on my stomach and putting their full weight on my back and  
5 grabbing my wrists and bending them back. I told them  
6 to stop, ouch, a few times; but they refused. And the  
7 only resistance that I gave was to try and straighten  
8 my already swollen and sprained wrists, so as Gutierrez  
9 #1925 and Mendoza #2324 would not break my wrists.  
10 At this point any sheriff/Deputy would of known in their  
11 right mind that my wrists were injured pretty bad.  
12 For you could visibly see my wrists swollen from  
13 previous excessive force that was applied earlier  
14 that day. This behavior was malicious and sadistic,  
15 with the intent of causing me harm. This  
16 behavior that I have stated in this paragraph by  
17 Mendoza #2324 and Gutierrez #1925 have  
18 caused me a great deal of pain and suffering.

19 4. (EXHIBIT C)  
20 Highlighted area, where Deputy Mendoza #2324 states  
21 "subject clothing was discarded due to being soiled."  
22 This statement by Deputy Mendoza #2324 tells me  
23 that Deputy Mendoza #2324 was the one that  
24 bent my fingers back, pulling them out of joint and  
25 the Deputy who ripped my soiled pants off. For they  
26 were one and the same Deputy.

27 Since these officers were not giving me any  
28 proper commands I had to ask Deputy Mendoza #2324

Page 6 of 9

AMENDED STATEMENT OF CLAIM COMPLAINT

1 what he wanted me to do, as I was lying on the cell  
2 block floor handcuffed and already beat up. Deputy  
3 Mendoza #2324 told me to roll over on my stomach.  
4 I complied. Mendoza #2324 got on top of me again  
5 bending and twisting my left wrist that was already  
6 swollen and grabbed my fingers on my left hand, bending  
7 my fingers backwards. until I heard a loud pop. Sheriff/  
8 Deputy Mendoza #2324 kept behaving in this excessive  
9 way for a few seconds more. Then Deputy Mendoza  
10 #2324 physically and violently ripped my soiled pants  
11 off and with his hand, violently wiped my butt  
12 with my soiled pants. Deputy Mendoza #2324  
13 applied this pressure so hard I felt like I  
14 was getting roped by his fingers and my soiled  
15 pants. By this time I was in so much pain  
16 physically and emotionally I started to cry.  
17 Finally, Deputy Mendoza #2324 took the hand-  
18 cuffs off. This whole time I was already subdued,  
19 handcuffed and lying on the cell block floor.

20 This behavior by Mendoza #2324 is unacceptable.

21 This malicious and sadistic behavior was applied  
22 for the very purpose of causing harm. These  
23 actions by Mendoza #2324 has caused me to  
24 suffer and be in pain physically, mentally, and  
25 emotionally. These actions by Mendoza #2324 has  
26 caused me pain and prolonged suffering in my left  
27 hand's nerves, muscles, joints, and fingers. In my  
28 left hand these nerves, muscles, joints and fingers

page 7 of 9

AMENDED STATEMENT OF CLAIM COMPLAINT

1 (Do not work right) and close all the way without Pain  
2 and suffering. And still to this present day there is  
3 still Pain and suffering that I am still going through.  
4 Through this whole excessive force incident in the  
5 cell block the only resistance that I applied was  
6 just enough force on my handcuffed wrists so  
7 that Gutierrez # 1928 would not break my wrists.

8 5. This whole time while Deputy/Sheriff's Mendoza  
9 #2324 AND Gutierrez #1928 were attacking me  
10 with excessive force, there were officers at the  
11 cell block door watching AND or participating in this  
12 excessive force. I hold them responsible for the  
13 Pain and suffering; because they just stood there  
14 and watched the pain and suffering continue.

15 6. I then sat in the cell for 2 to 3 days without no  
16 kind of medical attention for my hands, wrists and  
17 fingers. Causing me even more pain and suffering. I  
18 hold the medical staff responsible for that 2 to 3 days  
19 that they did not take me to a doctor or attend to  
20 my visibly swollen wrists, hands and fingers. Causing  
21 me prolonged pain and suffering for 2 to 3 days.  
22 To me this is medical malpractice.

23 7. IN (EXHIBIT-D), Highlighted area, Deputy/Sheriff  
24 Supervisor Mercado #1982, Fox #2224, And Lena #  
25 56 are mentioned in this San Francisco Field arrest  
26 card. Because of this I would like to do some  
27 discovery on them and see if they played a part  
28 in this excessive force incident # 190-143-778.

### CONCLUSION

1. At all times in the Amended Statement of Claim Complaint any Deputy/Sheriff/building grounds Patrol may take the place of any other deputy/sheriff/building grounds patrol in this amended statement of claims (complaint). OR names may be added. Do to camera/video surveillance, discovery and in the interest of justice.

### PRAYER FOR RELIEF

(1) That the honorable Judge of the court will ADD these Above defendants in the Amended complaint under the civil rights ACT, 42 U.S.C § 1983 For added officers/building grounds patrol being summoned to this law suit Case No. CV-198204.

(2) \$ 100,000 + dollars in monetary damages.

(3) Pay For my doctor bills (4) Pay for any possible limited disability that may keep me from performing my job as a established Union Journeyman Carpenter. (5) Pay For my Filing Fee.

(6) Pay For my Filing Fee's (7) Pay For any Attorney that I might acquire. (8) PAY For Any lost wages. (9) Restraining orders on the guilty defendants that caused the excessive Force.

I declare under penalty of perjury that the foregoing is true and correct and understand that a false statement herein may result in a dismissal of my claims.

Date: 1-18-2020 / Signature of Applicant in Proper: Michael Luckert

Page 9 of 9  
AMENDED statement of claim COMPLAINT AND PRAYER FOR RELIEF



# EXHIBIT . A

SAN FRANCISCO POLICE REPORT, INCIDENT #

190-143-778 OF: D. SMITH #2275

PAGES 1 AND 2 CV-198204

(EXHIBIT . A) SAN FRANCISCO POLICE REPORT, INCIDENT #  
190-143-778, PAGES 1 AND 2 OF D. SMITH #2275  
CV-198204

INCIDENT NO. 190-143-778 SAN FRANCISCO SHERIFF'S DEPARTMENT INCIDENT REPORT HEADING		FORCE CASE EXH. b.1. * Police Report Filed 01/27/20 Page 12 of 25	
TYPE OF INCIDENT: <input checked="" type="checkbox"/> ARREST MADE <input type="checkbox"/> SUSP. KNOWN <input type="checkbox"/> SUSP. LINK <input type="checkbox"/> NON-SUSP. INCIDENT <input type="checkbox"/>			
REPORTING UNIT: 1Y20 IDA DATE/TIME OF OCCURRENCE: 02/26/2019 @ 1625 hours LOCATION OF OCCURRENCE: 30 Grove Street, San Francisco Public Library		TYPE OF PRELIMINARY: MISC. building/store LOCATION SENT TO: Same PRELIMINARY: <input type="checkbox"/> ABUSE <input type="checkbox"/> ABUSE RELATED <input type="checkbox"/> JUVENILE <input type="checkbox"/> SUBJECT <input type="checkbox"/> BASED	
I DECLARE UNDER PENALTY OF PERJURY, THIS REPORT OF FACTS IS TRUE AND CORRECT, BASED ON MY PERSONAL KNOWLEDGE OR IS BASED ON INFORMATION AND BELIEF FOLLOWING AN INVESTIGATION OF THE EVENTS AND PARTIES INVOLVED.			
REPORTING DEPUTY (PRINT NAME / STAR): D. Smith REPORT REVIEWED BY (PRINT NAME / STAR): Lt. M. Haskell #1374 WATCH: 1500-2300 ASSIGN TO: SFSD CIV 27170 HOW CLEARED:		SIGNATURE: <i>[Signature]</i> #2275 WATCH COMMANDER APPROVAL (PRINT NAME / STAR): ASSIGNMENT BY (PRINT NAME / STAR): COPY TO: <input checked="" type="checkbox"/> IC9B ENTRY	
BUSINESS ADDRESS / CITY IF NOT SAN FRANCISCO: 190-572-589 BUSINESS PHONE (DAY / NIGHT): RESIDENCE ADDRESS / CITY IF NOT SAN FRANCISCO: 190-572-589 RESIDENCE PHONE (DAY / NIGHT): NAME (LAST, FIRST, MIDDLE) / FIRM NAME IF BUSINESS:			
OTHER INFORMATION / IF INTERPRETER NEEDED SPECIFY LANGUAGE:			
SIGNATURE OF PARTY REPORTING MISSING PERSON:			
293 PC NOTIFICATION (SEEK OFFENSE CASE ONLY): YES <input type="checkbox"/> NO <input type="checkbox"/>			
CONFIDENTIALITY REQUESTED: YES <input type="checkbox"/> NO <input type="checkbox"/>			
ADDL: <input type="checkbox"/>			
SIGNATURE:			
SFSD FORM P10A (12/14)			

EXH. b.1. \*  
 Police Report  
 Filed 01/27/20 Page 12 of 25

EXHIBIT A Page 2

## SAN FRANCISCO SHERIFF'S DEPARTMENT INCIDENT REPORT NARRATIVE

INCIDENT NO:190-143-778

PAGE 2 OF 3

D. SMITH # 2275

On February 26, 2019, I was assigned to the San Francisco Public Library located at 30 Grove Street. I was partnered with Deputy E. Gutierrez #1928. At approximately 1625 hours Building and Grounds Dispatcher advised me that an assault had occurred on the sixth floor. When I arrived on scene I identified myself as a Deputy Sheriff. Building and Grounds Patrol Officers were standing by with an unknown male adult who I later identified as Luckert, Michael SF#473075.

Building and Grounds Patrol Officers notified me that Luckert had assaulted a library staff member. I asked Luckert to explain what had happened and he stated, "To be honest I do not like black people!" I then asked Luckert again to tell me what happened. Luckert stated, "I don't like perverts, so I pinned the man against the wall and told him to sit down!" for Luckert's safety and my safety I told Luckert to turn around so I could place handcuffs on him. Luckert refused and stated, "fuck no!" Luckert had clenched fists and was sweating profusely. I stepped in towards Luckert to place him in handcuffs and he began to resist by attempting to pull away. Building and Grounds Patrol Officers and I were able to secure Luckert into handcuffs. I told Luckert that he was being placed under arrest.

I escorted Luckert down to the Building and Grounds Patrol office. Luckert continued to try to pull away from us the entire way down to the office. I went over the radio on SO-A16 to advise Deputy Gutierrez to meet me in the office. Deputies Gutierrez #1928, Brule #2005 and Espiritu #1952 arrived on scene. While searching Luckert Deputy Gutierrez found a folding knife (E1) concealed in Luckert's left pant pocket. Deputies Espiritu #1952, Gutierrez #1928 and Brule #2005 escorted Luckert to the Sheriff's van parked on Grove street and secured him in the back. Deputy Gutierrez called CWB and spoke to Lena #56. She advised Gutierrez that Luckert was on Federal Probation. Deputy Gutierrez spoke to Luckert's probation officer Figueroa, Jose. Figueroa advised Gutierrez that Luckert would be placed on a Federal Probation Hold.

I spoke to Building and Grounds Patrol Officer Ochoa, Anthony after the incident and he stated he would write a San Francisco Sheriff Department Incident Report Statement (E2). I also spoke to Building and Grounds Patrol Supervisor Ancheta, Walter who stated they had footage of the incident. Ancheta burned a copy of the footage on to a DVD-R (E3).

Deputy Gutierrez and Deputy B. Mendoza #2324 transported Luckert to County Jail #1. Where he was medically cleared and booked for the following: 148(a) PC, 602.1(b) PC, 171b(a) PC and 415 PC.

I took (2) photographs of the folding knife. I booked (E1, E2, and E3) in the City Hall Security Evidence Locker located at 1 Dr. Carlton B. Goodlett Place, Room 017.

EXHIBIT A / Page 2

DID NOT  
do this  
OR SAY  
THIS

I stated  
Luck NO  
which in my  
head I was  
responding to  
Did you assault  
a library employee

EN a  
attempt  
for the  
officer  
NOT to  
INJURY ME

I put just  
enough force  
on my wrist  
that were handcuff behind me  
so as they my wrists  
and fingers would not  
break.

DID NOT  
SAY  
THIS

The officer  
asked me to  
grasp my hand

I was already under arrest  
and in the back of the  
transport van and the  
officer ask me do you  
have anything else in  
your pockets. I said yes  
a knife and gave it to the  
officer took it out of  
my left pocket.

This was voluntary and  
and I was cooperating.

# EXHIBIT. B

SAN FRANCISCO SHERIFF'S DEPARTMENT

INCIDENT REPORT # 190-143-778

OF ANTHONY P. OCHOA Page 1 of 1

CV-19 8204

(EXHIBIT. B), SAN FRANCISCO SHERIFF'S DEPARTMENT  
INCIDENT REPORT # 190-143-778 OF ANTHONY P. OCHOA  
PAGES 1 OF 1 CV-19 8204



SAN FRANCISCO SHERIFF'S DEPARTMENT

INCIDENT REPORT STATEMENT

INCIDENT NUMBER \_\_\_\_\_

CAD NUMBER \_\_\_\_\_

NAME (LAST, FIRST, MIDDLE) OF PERSON GIVING STATEMENT <u>OCHOA, ANTHONY P.</u>		DOB/AGE <u>10/22/83 - 35</u>	PERSONAL CONTACT PHONE NUMBER <u>(650) 291-0475</u>	BUSINESS PHONE NUMBER <u>(415) 557-4357</u>
RESIDENCE ADDRESS/CITY IF NOT SAN FRANCISCO <u>227 BRUNSWICK ST.</u>		CITY/STATE/ZIP CODE <u>94112</u>	BUSINESS ADDRESS/CITY IF NOT SAN FRANCISCO <u>100 LARKIN ST</u>	
DATE OF STATEMENT <u>2/26/19</u>	TIME STARTED <u>5:30 PM</u>	TIME COMPLETED	LOCATION WHERE STATEMENT TAKEN <u>AT SCENE <input checked="" type="checkbox"/> OTHER <input type="checkbox"/></u>	
STATEMENT TAKEN BY (NAME/STAR)		IN THE PRESENCE OF (IF APPLICABLE)		

AT APPROXIMATELY 4:15 PM, I [ANTHONY OCHOA] RESPONDED TO A CALL ON THE 6TH FLOOR OF THE LIBRARY WITH TWO COLLEAGUES ABOUT ONE OF THE LIBRARY STAFF MEMBERS WHO GOT ASSAULTED. UPON ARRIVAL, WE NOTICED A SUSPICIOUS PERSON 'STILL IN THE AREA. WE APPROACHED THE PATRON AND HE BECAME IMMEDIATELY DEFENSIVE AND WAS TAKING AGGRESSIVE POSTURES TOWARDS MYSELF AND MY COLLEAGUES. WE THEN MADE A RADIO CALL TO HAVE THE SHERIFF DEPUTY COME ASSIST DUE TO THE AGGRESSIVE PATRON. [DEPUTY SMITH] RESPONDED TO THE SCENE. ONCE CONFIRMED THAT THE PATRON ASSAULTED OUR STAFF MEMBER, DEPUTY SMITH ATTEMPTED TO DETAIN THE PATRON. THE PATRON INSTANTLY BECAME MORE DEFENSIVE AND WAS RESISTING ARREST AND WAS ATTEMPTING TO FIGHT BACK. MY COLLEAGUES AND I BEGAN ASSISTING DEPUTY SMITH IN DETAINING THE PATRON.

ONCE UNDER CONTROL, THE PATRON WAS BROUGHT TO THE SECURITY OFFICE TO BE PROCESSED AND HE CONTINUED TO FIGHT BACK WITH SECURITY AND THE DEPUTY. MORE DEPUTY'S ARRIVED SHORTLY AFTER AND CONTINUED RESISTING COMMANDS AND WAS STILL BEING AGGRESSIVE. WHILE THE DEPUTY'S AND SECURITY ATTEMPTED TO DETAIN HIM TO THE BENCH. HE WAS THEN PROCESSED AND IDENTIFIED AS LUCKERT, MICHAEL. LUCKERT WAS THEN TAKEN AWAY TO BE PROCESSED BY SHERIFF DEPUTY'S.

NOTHING FURTHER TO REPORT.

I DECLARE UNDER THE PENALTY OF PERJURY, THAT THE STATEMENT OF 1 PAGES IS TRUE AND CORRECT, BASED ON MY PERSONAL KNOWLEDGE.

SIGNATURE OF PERSON GIVING STATEMENT: [Signature]

SFSD FORM P02 (07/15)

# EXHIBIT.C

DEPUTY: MENDOZA # 2324

STATEMENT IN HIGHLIGHTED

AREA INCIDENT REPORT #

190-143-778 / PAGE 1 OF 1

CV-198204

(EXHIBIT.C), DEPUTY: MENDOZA # 2324 / STATEMENT IN  
HIGHLIGHTED AREA INCIDENT REPORT #  
190-143-778 / PAGE 1 OF 1 CV-198204

DEPUTY B. {  
Mendoza  
#2324  
Depert that  
twisted my already  
swollen wrists  
and fingers when  
I was already  
injured, subdued  
and lying on the  
jail cell floor.

[illegible]

7

EXHIBIT.D

SAN FRANCISCO ARREST CARD  
WITH OFFICER'S NAMES TO  
BE ADDED TO CV-198204  
FROM INCIDENT REPORT: 190-143-778

(EXHIBIT.D) SAN FRANCISCO ARREST CARD WITH  
OFFICER'S NAMES TO BE ADDED TO CV-198204  
FROM INCIDENT REPORT: 190-143-778



Find out what Deputy this is

[illegible]

check these  
name with camp

Fox # 2234  
16NA # 56  
MERCADO # 1983

ADD TO L. B. W. S. V. T.

CERTIFICATE OF SERVICE

I, Michael Luckert, certify under the penalty of PERJURY, that I put in the Mail here at Santa Rita Jail, 5325 Broder Blvd, Dublin, CA 94568 the following documents: Notice to United States officers to be added as defendant's by Amendment.

AMENDED STATEMENT OF CLAIM (COMPLAINT), (EXHIBIT.A) SAN FRANCISCO POLICE REPORT INCIDENT # 190-143-778 OF D.SMITH #2275, (EXHIBIT.B) SAN FRANCISCO SHERIFF'S DEPARTMENT INCIDENT # 190-143-778 OF ANTHONY P. OCHOA, (EXHIBIT.C) DEPUTY: MENDOZA #2324 STATEMENT IN HIGHLIGHTED AREA INCIDENT REPORT # 190-143-778, (EXHIBIT.D) SAN FRANCISCO ARREST CARD WITH OFFICER'S NAMES TO BE ADDED.

ADDRESSED TO: ATTN: COURT CLERK, U.S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, 450 GOLDEN GATE AVE. BOX 36060, SAN FRANCISCO, CA 94102

Executed on THIS DAY OF January 22, 2020

CASE NO: CV-198204

Date: January, 18 2020

Respect Fully Submitted,

IN Pro-Per: Michael Luckert, 5325 Broder Blvd, Dublin, CA 94568  
Signature: Michael Luckert

## CERTIFICATE OF SERVICE

I, Michael Luckert, certify under the Penalty of PERJURY, that I put in the Mail here at Santa Rita Jail, 5325 Broder Blvd, Dublin, CA 94568 the following documents: Notice to United States Officers to be added as defendants by Amendment

## AMENDED STATEMENT OF CLAIM

(COMPLAINT), (EXHIBIT.A) SAN FRANCISCO POLICE REPORT INCIDENT # 190-143-778 OF D.SALITH #2275, (EXHIBIT.B) SAN FRANCISCO SHERIFFS DEPARTMENT INCIDENT # 190-143-778 OF ANTHONY P. OCHOA, (EXHIBIT.C) DEPUTY: MENDOZA #2324 STATEMENT IN HIGHLIGHTED AREA INCIDENT REPORT # 190-143-778, (EXHIBIT.D) SAN FRANCISCO ARREST CARD WITH OFFICER'S NAMES TO BE ADDED

ADDRESSED TO: ATTN: COURT CLERK, U.S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, 450 GOLDEN GATE AVE. BOX 36060, SAN FRANCISCO, CA 94102

Executed on THIS DAY OF January 22, 2020

CASE NO: CV-19 8204

Date: January, 18 2020

Respect Fully Submitted,

IN PRO-PER: Michael Luckert, 5325 Broder Blvd, Dublin,

CA 94568

signature: Michael Luckert

(EXHIBIT-N)

SAN FRANCISCO FIELD ARREST CARD



~~CONFIDENTIAL~~

Find out what Deputy this is

Check these  
Name with camera  
Footage

For #2224  
1 ENA #56  
MERCADO #1963

ADD TO L.P. # SUIT

# EXHIBIT-0

NOTICE OF MOTION FOR A NEW TRIAL

**FILED**

APR 26 2024

CLERK, U.S. DISTRICT COURT  
NORTH DISTRICT OF CALIFORNIA  
OAKLAND OFFICE

1 Michael Luckert PFN: ULW-491

2 5325 Broder Blvd

3 Dublin, CA 94568

4 Attorney in pro-se: Michael Luckert

5  
6 UNITED STATES DISTRICT COURT  
7 NORTHERN DISTRICT OF CALIFORNIA

8 Michael Luckert, Plaintiff

Case NO. 19-CV-08204-  
PJH

9 VS.

10 SAN FRANCISCO Police Dept

11 AND OFFICERS: BRIAN

12 MENDOZA #2324, Defendant

NOTICE OF MOTION FOR  
A New TRIAL

F.R.C.P. RULE 59

14 Notice to the defendant AND the Judge

15 showing that good cause exist for a New Trial. During

16 pretrial the plaintiff, Michael Luckert, was sent

17 some previously exchanged Discovery documents. The

18 plaintiff, Noticed in a good black and white copy of

19 (EXHIBIT-A) to the Declaration of Brian Mendoza)

20 Document 70-11, Filed: 05/11/22, page 2 of 5, that

21 officer Brian Mendoza #2324 used his initials and

22 cursive style star number to identify himself in

23 the searches/SFSD P&amp;P strip (x) Search Box for

24 doing a strip search on plaintiff. Do to not getting

25 a good copy or from getting Fraudulent Filmed over

26 yellow copies to hide certain facts I am Now

27 Just discovering this New Evidence.

28 (1). The Plaintiffs case is Based on the fact

Notice OF MOTION FOR A New Trial

Page 1 of 2

(EXHIBIT-D) Notice OF MOTION FOR A New  
Trial

1 OF what San Francisco officer strip searched  
2 Plaintiff.

3 RELIEF

4 (1). A NEW TRIAL WITH OFFICER BRIAN MENDOZA  
5 #2324 as a Defendant in the Above case.

6  
7 Date: 4-15-2024

8  
9 signature of Attorney in pro-se: Michael Luckert  
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DENNIS J. HERRERA, State Bar #139669  
City Attorney  
MEREDITH B. OSBORN, State Bar #250467  
Chief Trial Deputy  
EDMUND T. WANG, State Bar #278755  
Deputy City Attorney  
Fox Plaza  
1390 Market Street, Sixth Floor  
San Francisco, California 94102-5408  
Telephone: (415) 554-3857  
Facsimile: (415) 554-3837  
E-Mail: edmund.wang@sfcityatty.org

Attorneys for Defendants  
DEVIN SMITH, EDWARD GUTIERREZ,  
MATTHIEU BRULE, JONATHAN ESPIRITU,  
BRIAN MENDOZA, and ANTHONY P. OCHOA

## UNITED STATES DISTRICT COURT

## NORTHERN DISTRICT OF CALIFORNIA

MICHAEL LANDON LUCKERT,

Plaintiff,

vs.

O. SMITH #2275; GUTIERREZ #1928;  
BRULE #2005; ESPIRITU #1952;  
MENDOZA #2324; ANTHONY P. OCHOA,

Defendants.

Case No. 19-cv-08204-PJH

**DECLARATION OF BRIAN MENDOZA IN  
SUPPORT OF DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

Date Action Filed: December 17, 2019  
Trial Date: Not Set

I, Brian Mendoza, declare as follows:

1. I am, and at all relevant times mentioned herein was, a Deputy Sheriff with the San Francisco Sheriff's Office. I have personal knowledge of the contents of this declaration, except as to those facts that I indicate are based on information and belief. If called upon to testify, I could and would testify competently to the contents of this declaration.

2. On February 26, 2019, I was assigned to provide law enforcement patrol and security services at San Francisco City Hall located at 1 Dr Carlton B Goodlett Place. I responded to the San Francisco Main Library (the "Main Library") located at 30 Grove Street in response to a "407" request

1 for prisoner transport. I responded to a Sheriff's Office transport van parked outside of the Main  
2 Library on Grove Street. I did not enter the Main Library.

3 3. I participated in transporting the individual who I now know is Plaintiff Michael  
4 Luckert in the transport van from the Main Library to San Francisco County Jail #1, which is the  
5 Intake Center and Release Center where the Sheriff's Office books people after they are arrested.

6 4. Upon arriving at San Francisco County Jail #1, Plaintiff refused orders to exit the  
7 vehicle and was verbally hostile and aggressive.

8 5. During the booking process, Plaintiff continued to be verbally hostile and aggressive  
9 and continued to be resistive and refused to follow orders. At times during the booking process, I  
10 applied a control hold to gain compliance with the fingerprinting, photographing, and medical triage  
11 components of the booking process. Plaintiff repeatedly tried to pull away from me during the booking  
12 process. I applied only minimal pressure. I applied only enough pressure to be able to detect any  
13 resistance and to maintain control of Plaintiff.

14 6. Plaintiff was placed in a safety cell. A safety cell is a padded single cell used in certain  
15 situations, including for prisoners who are physically combative or otherwise present an imminent  
16 danger to others, or who are a danger to self. I participated in placing Plaintiff in a safety cell. On the  
17 way to the safety cell, Plaintiff continued to be resistive and refused orders. Plaintiff continued to be  
18 verbally hostile and aggressive. To escort and guide Plaintiff to the safety cell, I walked alongside  
19 Plaintiff and had one hand on his shoulder and one hand on his wrist. Plaintiff repeatedly tried to pull  
20 away from me. I applied only enough pressure to be able to detect any resistance and to maintain  
21 control of Plaintiff.

22 7. In the safety cell, it was necessary for Plaintiff to be on his stomach so that his  
23 handcuffs could be removed. Plaintiff's clothes needed to be removed as well. Plaintiff soiled his  
24 clothes. I smelled feces on Plaintiff's person and his clothes. In the safety cell, Plaintiff continued to  
25 be resistive and refused orders. Plaintiff continued to be verbally hostile and aggressive. Plaintiff  
26 continued to try to pull away from me. I did not remove Plaintiff's handcuffs. I did not remove  
27 Plaintiff's clothes. Other deputies removed Plaintiff's handcuffs and clothes while I maintained control  
28 of one of Plaintiff's shoulders and arms. I applied only enough pressure to be able to detect any



1 resistance and to keep Plaintiff from rolling back over until his handcuffs and clothes could be  
2 removed. I did not "put[] [my] full weight on [Plaintiff's] back" as alleged in Plaintiff's complaint. I  
3 did not make any physical contact with Plaintiff's back at all.

4 8. I did not threaten or use deadly force against Plaintiff at any time. I did not hit, kick,  
5 strike, or otherwise deliver any physical blows to Plaintiff at any time. I did not threaten or deploy any  
6 weapons against Plaintiff at any time.

7 9. A true and correct copy of the Field Arrest Card related to Plaintiff's arrest on February  
8 26, 2019 is attached hereto as Exhibit A. I wrote the notation on the second page of Exhibit A,  
9 "2/26/19 SUBJECT RESISTED ARREST AND RESISTED EXITING THE VEHICLE; SUBJECT  
10 WAS VERBALLY AGGRESSIVE; SUBJECT CLOTHING WAS DISCARDED DUE TO BEING  
11 SOILED W/ FECES."

12 I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is  
13 true and correct.

14 Executed this 9 day of August, 2021 at San Francisco, California.

15  
16   
17 BRIAN MENDOZA  
18  
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(EXHIBIT-P)

MOTION FOR A NEW TRIAL WITH BRIAN  
MENDOZA #2324 AS A DEFENDANT IN HIS  
OFFICIAL AND INDIVIDUAL CAPACITY



1 Michael Luckert PFN: ULW-491  
 2 5325 Broder Blvd  
 3 Dublin, CA 94568  
 4 Attorney in pro-se: Michael Luckert  
 5

6 UNITED STATES DISTRICT COURT  
 7 NORTHERN DISTRICT OF CALIFORNIA

8 Michael Luckert, Plaintiff  
 9 vs

Case NO. 08204 -  
 PJH

10 San Francisco Police Dept  
 11 And Officer Brian Mendoza  
 12 # 2324, Defendants  
 13  
 14  
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 16

MOTION FOR A NEW  
 TRIAL WITH BRIAN  
 MENDOZA #2324 AS A  
 Defendant in HIS  
 OFFICIAL AND

INDIVIDUAL CAPACITY  
 F.R.C.P. Rule 59

17 TO The defendant Brian Mendoza #2324. AND  
 18 to the Judge of the Court. Because of the New  
 19 Evidence that has been discovered Please substitute  
 20 Gutierrez # 1928 For substitutee Mendoza #2324.  
 21 As the Courts may know in Plaintiff's (IN opposition  
 22 to summary Judgment), Document 77, Filed 06/29/22,  
 23 Page 10 Lines 2-11 Explain the excessive force that  
 24 was done to plaintiff. IF you substitute Gutierrez #  
 25 1928 For substitutee Mendoza #2324.

26 Page 10 Lines 2-11 ALSO explains that the  
 27 Same Officer that stripped my soiled clothes  
 28 OFF touching my butt hole with his hand so

MOTION FOR A NEW TRIAL WITH BRIAN  
 MENDOZA #2324 AS A Defendant

Page 1 of 3

(EXHIBIT P), Motion For a New Trial  
with Brian Mendoza #2324 as a Defendant  
in his Official and Individual Capacity.

1 hard it almost felt like rape

2 \_\_\_\_\_ is also the same officer that used  
3 excessive force and bent my fingers back until  
4 they popped. Ripping my fingers out of joint causing  
5 extreme pain etc...

6 → (1). (EXHIBIT. A), to the declaration of Brian  
Please refer to 7 Mendoza, Document 70-11, Filed: 05/11/22, Page 2 of 5,  
8 San Francisco Field Arrest Card. Officer Brian Mendoza  
EXHIBIT 9 #2324 used his initials (BM) and cursive style star  
0  
10 number 2324 to identify himself in the searches/  
11 SFSD P&P STRIP (X) search Box for doing a strip  
12 search on plaintiff.

13 Do to not getting a good copy of  
14 (EXHIBIT. 1), San Francisco Field Arrest Card, from  
15 getting fraudulent filmed over yellow copies to  
16 hide certain facts I am now just discovering this  
17 new evidence in the San Francisco Field Arrest Card documents.

18 (2) (EXHIBIT. 2), San Francisco Field Arrest Card,  
19 In this Exhibit the courts and the Jury can see  
20 if you hold it up to light that in the searches,  
21 SFSD/P&P: strip (X) search box of this black and  
22 white copy that the initials (BM) and cursive  
23 style star Number of Brian Mendoza #2324 are  
24 here to authenticate and identify what officer  
25 Brian Mendoza #2324 did that day. As in  
26 strip search plaintiff.

## 27 RELIEF

28 (1). A New Trial with officer Brian Mendoza

Motion for a New Trial with Brian  
Mendoza #2324 as a Defendant

Page 2 of 3

1 #2324 AS a defendant in the Above case.

2  
3 (2). A New Trial date of July 20, 2024.

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5 Dated: 4-16-2024

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7 signature of Attorney in Pro-se: Michael Luckert  
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(EXHIBIT .1)

SAN Francisco Field Arrest Card  
Fraudulent Filmed over Yellow Copy

Motion For A New Trial with Brian  
MENDOZA #2324 AS A DEFENDANT



motion for a new trial with Brian Mendez as defendant

[illegible]

(EXHIBIT .2)

SAN FRANCISCO Field Arrest  
CARD

Black AND WHITE copy.

MOTION FOR A NEW TRIAL WITH BRIAN  
MENDOZA #2324 AS A Defendant



Case 4:19-cv-08204-PJH Document 70-11 Filed 05/11/22 Page 2 of 5

SAN FRANCISCO FIELD ARREST CARD									
SFPD Booking #	Booking Last Name: <b>Luckert</b>	Booking First Name: <b>Michael</b>	Booking Middle Name:	DOB:	SFPD Booking #				
CASE # <b>190-143-7788</b>	AKA - Last Name:	AKA - First Name:	Pref Pronoun: He ( ) She ( ) They ( ) Other ( ) None ( )						
Local ID # (SFNO)	Residence Address: <b>Transient</b>		Date of Arrest: <b>2/26/19</b>	RACE: (Check One)					
PID Hit ( ) Yes ( ) No	Location of Arrest: <b>30 Grove Street</b>		Time of Arrest: <b>11:35</b> Hrs	( ) American Indian/Alaskan					
COL # / State:	Prior to Booking: ( ) Combative ( ) Use of Force ( ) Medical Assessment		Sex: <b>Male</b> ( ) Female ( )	( ) Asian/Pacific Islander					
CII #	*If ANY are checked, provide explanation on the back of the card		Non-Binary ( )	( ) Black ( ) White ( ) Unknown					
FBI #	Agency: <b>SFSD</b>	Reason NOT Cited:	Gender Identity	Ethnicity: <b>White</b>					
CWB Check: Name / Star #	Unit: <b>17201DA</b>	DV Related ( ) Yes ( ) No	TGN	Jail Health-Medical Triage					
LENA # <b>50</b>	Consular Notification ( ) Yes ( ) No	Property Booked into Evidence Y ( ) N ( )	Search Pref: M F	Cleared for booking					
Global Subject File #	Deputy:	Check 1E Attempted	No Pref Start	Refused for booking					
Arresting Officer: <b>SMITH #2275</b>	Charge 1	Attempt	SEARCHES	JHS Remarks: <b>2/26/19 Time 1744</b>					
Arresting Officer: <b>GUTIERREZ #1428</b>	Charge 2		Counter: <b>By: [Signature] AH: [Signature]</b>						
Supervisor: <b>MERADO #1982</b>	Charge 3		P&P Strip ( ) Pat ( )						
Notifications Made	Charge 4		Deputy: <b>[Signature]</b>						
Name:			SEARCH COMPLETED						
Phone#			P&P Strip ( ) Pat ( )						
Relationship (check one)			Time of Search						
( ) Officer ( ) Parole ( ) Probation			Deputy:						
Remarks:			Star:						
Last/First:									
Sub Code:		Class Level:							



MOTION FOR A NEW TRIAL WITH BRIAN MENDOZA  
 #2324 AS A DEFENDANT  
 Declaration of  
 Brian Mendoza

Page 1 of 1

CERTIFICATE OF SERVICE

I, Michael Luckert, have mailed in the legal mail

system here at: Santa Rita Jail, 5325 Broder Blvd

Dublin, CA 94568 the following documents: (Notice of Motion for a New Trial), (Motion for a new

Trial with Brian Mendoza #2324 as a Defendant

in his Official and Individual Capacity), (Motion for

Required Joinder of Parties Brian Mendoza #2324 as a defendant).

ADDRESSED TO: UNITED STATES DISTRICT

Court, Northern District of California, 1301 Clay St,

Suite 4005, Oakland, CA 94612

Executed on this Day of: April 22, 2024

Michael Luckert PFN: ULW-491

5325 Broder Blvd

Dublin, CA 94568

Case No. 4:19-cv-08204-PJH

Signature of Attorney in pro-se: Michael Luckert

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(EXHIBIT-Q)

OPPOSITION AND OBJECTIONS TO DEFENDANT  
EDWARD GUTIERREZ EXPERT DISCLOSURE

Michael Luckert

391 ELLIS ST, San Francisco, CA 94102

707-803-3836

ATTORNEY in PRO-SE: Michael Luckert

## UNITED STATES DISTRICT COURT

## NORTHERN DISTRICT OF CALIFORNIA

Michael Luckert

CV-19-08204-PJH

Plaintiff,

VS.

OPPOSITION AND objections

San Francisco Police Dept. to Defendant Edward

AND OFFICER Gutierrez, Gutierrez's Expert

Defendant.

Disclosure.

I, Michael Luckert, am a carpenter by trade.

~~but at this time I am a incarcerated inmate.~~

At the time of this incident at the library on

February 26, 2019 I was a free man. On this

day I experienced Excessive Force with officer

Gutierrez assaulting me, Michael Luckert, AND

injuring me with Excessive Force. Violating the

(4th Amendment) and also Medical Neglect which

I think should be added to the Charges of

2 Counts of EXCESSIVE Force. I am at this

time suing the San Francisco Police Dept. in

there official capacity.

Because the San Francisco Police dept. and

officer Gutierrez have erased, destroyed Video

Surveillance/body camera's And used Medical

OPPOSITION AND objections to defendant Edward Gutierrez / Page 1 of 7

Expert Disclosure.

(EXHIBIT - Q) opposition and objections  
to defendant Edward Gutierrez's Expert disclosure

1 neglect on Michael Luckert, Gutierrez should  
2 be held responsible in his official capacity And  
3 individual capacity for using excessive force on  
4 me, Michael Luckert, And if the honorable  
5 Judge will look at my original claim form I believe  
6 that is what I asked for from the very  
7 beginning.

### OPPOSITION

10 (I.A) From page 1-27 in defendant Edward Gutierrez's  
11 Expert disclosure is nothing but a defense based on  
12 if I, Michael Luckert, was resisting arrest, delaying  
13 police etc...

14 (I.a) IT has already been established that I did not  
15 resist arrest, etc., Assault a librarian, or commit any  
16 crime that day at the library on February 26, 2019.

17 All charges got dropped and video surveillance

18 has and would prove my innocent's that the  
19 San Francisco Police dept. and officer Gutierrez  
20 have destroyed or erased. This proof of destroyed

21 or erased video surveillance cameras is in

22 the defendant's reply to Michael Luckert's

23 motion to compel. Which I have requested through

24 a request for documents on March 18, 2024 but have

25 never been sent. And should be considered as a joint

26 undisputed fact of evidence at trial. Because of

27 established Documentation for trial.

28  
opposition and objections to defendant Edward  
Gutierrez expert disclosure.



1 (2.A) In Page 29 line 15 26 of (defendant  
2 Edward Gutierrez's Expert Disclosure) the Doctor  
3 is saying that I, Michael Luckert, have a open wound  
4 on my right thumb that is swollen a little; and left  
5 4th digit tip of finger that are infected and  
6 swelled up a little, on the 16th of February, 2019,  
7 from working on my car.

8 (EXHIBIT.1) San Francisco Jail Medical Report,  
9 Dated: 2/22/19, Page 31 shows that I was  
10 prescribed antibiotics and I.B.U. for the swelling.

11 (2a). On March 1, 2019 I, Michael Luckert, was  
12 seen at Valley Care Pleasanton.

13 (EXHIBIT.2) Valley Care Pleasanton, Page 11, in  
14 the highlighted area does not show any diagnosis  
15 or signs of infection or open cuts on my hands.

16 (EXHIBIT.3) Valley Care Pleasanton, Page 25,  
17 Highlighted area shows that the medication that  
18 I got was only I.B.U. Profen (Motrin), No  
19 Medications were prescribed for infection.  
20

## 21 CONCLUSION

22 (1) No Antibiotics were prescribed for infection  
23 at Valley Care Pleasanton. So Michael Luckert infected  
24 wounds and swelling were healed from 2-16-19 San Francisco

25 Jail triage/medical Records Appointment. After all  
26 it is more then likely that a small wound with  
27 Antibiotics and I.B.U. Profine would be healed  
28 in 10 days.

(2.) The Excessive Force that happened to Michael Luckert was a New INJURY. Please Refer to All Medical Reports In Opposition to Summary Judgment, Filing date: 6/29/22.

(3.) Video Surveillance would show the excessive Force through body Cameras but the defendant and San Francisco County Jail Police dept. erased, destroyed the Video Surveillance/Body camera Footage. This Proof is in the defendant's response to my motion to compel, which I have already did a meet and confer with and the defence did not respond on that issue of sending me the documented proof here at Santa Rita Jail even though I asked through a document Request. The defence should be held responsible for breaking the Federal rules of civil procedure Rule 37 (e), (1), (2), (Failure to preserve Electronically stored information).

(3.1) The excessive Force that happened with Police officer Gutierrez happened after the triage and in the safety cell. As explained (In opposition to Summary Judgment) Filed date: 6/29/22, page 5, Line 11-24. And Amended complaint. And Again Body cameras and video Surveillance would show the 2 counts of Excessive Force.

Opposition and objection to defendant Edward Gutierrez expert disclosure

page 4 of 7



CONCLUSION

(Defendant Edward Gutierrez's Expert discovery), Page 28 Line 28-41 is irrelevant and the Defence and the honorable Judge should pay attention to time signature and EXHIBIT'S In opposition to Summary Judgment. EXHIBIT (1). At 22:17 I complained about my hand injury. EXHIBIT B, Page 1 and 2, Highlighted Areas. I complained about my hand injury.

(EXHIBIT.4), San Francisco Jail Medical Report, Page 33 highlighted area will show that right after the excessive force At Safety Cell time 17:50 continuing on to the next Page, 34 highlighted area (EXHIBIT.B), (In opposition to summary Judgment) Filed 6/29/22, Page 1 I complained. Page 2 time signature: 19:20 I complained again about my hand injury.

(4.A) In (defendant EDWARD GUTIERREZ'S Expert disclosure), Page 29 lines 19-21 the defence said I said "In an attempt for the officer not to injure me I put just enough force on my wrists that were hand cuffed behind me so that my wrists and fingers would not break.

(4.a) officer Gutierrez did not give me any command, or reassess the situation. He pushed my hand beyond the capacity of which it will  
opposition and objections to defendant  
EDWARD Gutierrez expert disclosure Page 5 of 7

1 bend. At this time is when I tried to  
2 stiffen my hands but it did not work  
3 officer Gutierrez was just hell bound on  
4 injuring me, in which he did. This behavior  
5 being objectively unreasonable.

### 6 7 AUTHORITIES OF CASE LAW

8 Please refer to (In opposition to  
9 SUMMARY Judgment), Filed on 6/29/22. Pages  
10 1-4.

### 11 12 OBJECTIONS

13 For the defence not to be able to  
14 use any of (Defendant Edward Gutierrez's  
15 Expert disclosure in trial).

### 16 17 18 CLOSING STATEMENT

19 Rule 52 (6), of the Federal Rules of civil  
20 procedure. Setting aside the Findings of fact,  
21 whether based on oral or other evidence, must  
22 not be set aside unless clearly erroneous, and  
23 the reviewing court must give due regard to  
24 the trial court's opportunity to judge the  
25 witnesses' credibility.

### 26 RELIEF

27 For Plaintiff to win in trial with 2 counts  
28 of Excessive force And a added charge of

opposition and objections to defendant  
Edward Gutierrez expert disclosure Page 6 of 7

~~Case 4:19-cv-08204-PJH Document 178 Filed 12/16/24 Page 9 of 20~~  
medical Neglect,

Date : <sup>ML</sup> ~~3-27-2024~~ 12-13-2024

signature of Attorney in pro-se:  
Michael Luckert

opposition and objections to defendant Edward Gutierrez's expert disclosure Page 7 of 7

# (EXHIBIT-A)

DEFAULT; DEFAULT JUDGMENT FOR Failure to Preserve  
electronically Stored Information

1 Michael Luckert PFN: ULW491  
 2 5325 Broder, Blvd  
 3 Dublin, CA 94568  
 4 Attorney in pro-se: Michael Luckert

5  
 6 UNITED STATES DISTRICT COURT  
 7 NORTHERN DISTRICT OF CALIFORNIA

8 Michael Luckert, Plaintiff  
 9 vs

10 San Francisco Police Dept  
 11 AND OFFICER: GUTIERREZ  
 12 #1928

Case No. 19-cv-08204.  
 P.J.H. / DEFAULT;

DEFAULT Judgment  
 FOR FAILURE TO  
 PRESERVE  
 ELECTRONICALLY  
 STORED INFORMATION.

F.R.C.P. RULE 55

16 TO the honorable Judge of the court and to  
 17 the Jury. A default Judgment may be entered  
 18 against the UNITED STATES, its officers, or its  
 19 agencies only if the claimant establishes a  
 20 claim or a right to relief by evidence that  
 21 satisfies the court. So please conduct an  
 22 accounting of the above caption. Determine  
 23 the amount of damages. Establish the truth of  
 24 any allegation by evidence and investigate any  
 25 other matters.

26 F.R.C.P. Rule 37(e) Failure To Preserve  
 27 Electronically stored information. IF  
 28 electronically stored information that should have

DEFAULT: DEFAULT Judgment For Failure to preserve Electronically stored information. Page 1 of 6

(EXHIBIT-R) DEFAULT JUDGMENT FOR FAILURE TO PRESERVE ELECTRONICALLY STORED INFO.



1 been preserved in the anticipation or conduct  
2 of litigation is lost because a party failed  
3 to take reasonable steps to preserve it,  
4 and it can not be restored or replaced  
5 through additional discovery, the court:  
6 (1) upon finding prejudice to another party  
7 from lose of the information, may order  
8 measures no greater than necessary to cure  
9 the prejudice; or (2) only upon finding that  
10 the party acted with the intend to deprive  
11 another party of the information's use in  
12 the litigation may: F.R.C.P Rule 37(e)(1)(C)

13 In this case I am seeking a entry of  
14 default Judgment on the defence and/or  
15 defendants, because of the following  
16 documents:

17  
18  
19 1. (EXHIBIT - 1.N), original Complaint  
20 under the Civil Rights Act, 42 U.S.C § 1983,  
21 Document 1 Filed 12/17/19, Page 4, line 4-5  
22 I state "At this time the Police officers  
23 took turns on me."  
24 So when this complaint was filed  
25 12-17-19 the defence and its attorney's  
26 should of taken steps to preserve the  
27 electronically stored Body cameras and video  
28 surveillance it was not just

Default; Default Judgment for failure Page 2 of 6  
to preserve electronically stored  
information.

1 one officer, but officers involved in this case  
2 doing the excessive force and medical neglect. (EXHIBIT-1.N)  
3 Original complaint page 4 Lines 25-26 the  
4 plaintiff is stating "Subpoena of video  
5 surveillance and body cameras you will see that  
6 officer: D. Smith and other officers involved  
7 in this incident have committed excessive force  
8 and medical malpractice".

9 So with these types of statements in my  
10 original complaint of 12/17/19 the defence  
11 and the defendants involved in this case  
12 should of preserved the electronically stored  
13 body camera and video surveillance. But they  
14 did not they erased or destroyed evidence  
15 of the body cameras and video surveillance  
16 maliciously and sadistically right after  
17 I filed the original complaint on 12/17/19.

18 2. (EXHIBIT-1.O) Office of the City  
19 Attorney, letter dated April 17, 2024.

20 The Attorney in this document is saying that  
21 they "disposed of the video surveillance on  
22 February 1, 2020" and that the body cameras,  
23 "while the surveillance video was disposed of  
24 months prior on February 1, 2020".

25 2b. I do believe the defendant and  
26 Council have some kind of minimum  
27 standards for preserving electronically stored  
28 video/body camera surveillance. I do believe

Default; Default Judgment for Failure  
to preserve electronically stored information 3 of 6

it is 1 Year for the state and 2 years for Federal civil cases. In this case NO. 19-CV-08204-PJH the defence/San Francisco Police dept. violated even the minimum standard for the State. For preserving electronically stored information being body camera's and video surveillance by disposing of it on or before February 1, 2020 when the date of this Excessive Force/Medical Neglect incident was February 26, 2019.

### CONCLUSION

This Default; Default Judgment For Failure to Preserve electronically stored information, F.R.C.P. Rule 37(e). By not preserving electronically stored information of video surveillance/body camera's for 2 counts of Excessive force which is explained in: (IN SUPPORT OF Documented Pleadings for evidence and EXHIBITS FOR TRIAL) (In opposition to Summary Judgment), (supplemental to the opposition to summary Judgment) with medically documented Exhibit's - I.G, I.H, I.I, I.J. In which the Plaintiff had to go through with his hands, wrists injury.

This Default; Default Judgment For Failure to preserve electronically stored information F.R.C.P Rule 37(e) is also for Failure to preserve video surveillance/body camera's for Medical Neglect which is documented in (In Support of Documented

---

Default, Default Judgment For Failure to preserve electronically stored information. 4 OF 6

1 Pleadings for evidence and EXHIBITS FOR TRIAL),  
2 Page 2 Line 6 through Page 5 Line 15/ with  
3 documented exhibits.  
4  
5  
6

## 7 RELIEF

8 DEFAULT, DEFAULT JUDGMENT FOR FAILURE TO  
9 PRESERVE ELECTRONICALLY STORED  
10 INFORMATION OF VIDEO SURVEILLANCE/  
11 BODY CAMERAS OF THE FOLLOWING INCIDENTS:

12 (1). 2 Counts of excessive force.

13 (2). 1 Count of Medical Neglect.

14 (3). \$ 60,000 in damages for 2 counts of  
15 excessive force. Causing injury to Plaintiff  
16 and for Pain and Suffering.

17 (4). \$ 10,000 for Medical Neglect from San  
18 Francisco Jail Medical Triage and pulling  
19 me away not letting me get medical treatment  
20 for my hands, wrists injury.

21 (5). \$ 7,744.00 for out of pocket expenses  
22 in monetary damages. For Plaintiff being injured  
23 from excessive force and not being able to  
24 work. OR Because the plaintiff got arrested  
25 for false charges of resisting arrest etc. And  
26 was sent to Jail for a probation violation that  
27 got dropped. Because of these false charges  
28 Plaintiff had to start all over at the bottom

Default, Default Judgment For  
Failure to preserve electronically  
stored information.

5 of 6

1 of the ready to go to work list. Causing Plaintiff  
2 to be out of work for 2 more extra months in  
3 his normal trade as a Union Journeyman Carpenter.

4 (6). Pay for Plaintiff's Filing fee.

5 (7). Restraining order on the guilty defendant  
6 that caused excessive force/medical Neglect.

7 (8). Removed from the duties to protect and  
8 serve the Community as a police officer/  
9 security guard etc. Because of excessive  
10 force/medical Neglect.

11  
12 The plaintiff is suing in official capacity  
13 and Individual Capacity.

14  
15  
16 Date: 6-6-2024

17  
18 Signature of Attorney in Pro-se:  
19 Michael Luckert

20  
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28  

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Default, Default Judgment For  
Failure to preserve Electronically  
stored information.

Page 6 of 6



(EXHIBIT-S)

Pleading Special Matters of Fraud

COURT

FILED

APR 26 2024

CLERK, U.S. DISTRICT COURT  
NORTH DISTRICT OF CALIFORNIA  
OAKLAND OFFICE

1 Michael Luckert PFN: ULW-491

2 5325 Broder BLVD

3 Dublin, CA 94568

4 Attorney in pro-se: Michael Luckert

5

6 UNITED STATES DISTRICT COURT  
7 NORTHERN DISTRICT OF CALIFORNIA8 Michael Luckert, Plaintiff  
9 .vsCASE NO. 19-CV-08204 -  
PJH

10 AC San Francisco Police Dept

11 AND OFFICER: MENDOZA

12 # 2324

Pleading Special  
Matters of Fraud  
F.R.C.P. Rule 9(b)13  
14 To the honorable Judge of the Court.15 The plaintiff has found in Litigating the  
16 above case that the defence has committed  
17 fraud. And with particularity will describe  
18 the circumstances constituting fraud.19 The plaintiff, from the beginning of this case has  
20 been receiving documents from the defence in which  
21 Plaintiff rely on for evidence. Please refer to these  
22 documents that I have already sent the court.23 (1). Motion For A New Trial with Brian Mendoza  
24 #2324 as a defendant in his official AND Individual  
25 Capacity/ with certificate of service of Executed  
26 date of APR 12, 2024 (EXHIBIT 2) San Francisco  
27 Field Arrest Card in black and white. In which  
28 the Searches/SFSD (P&P: strip (x) Box is checked

Pleading special matters of fraud

Page 1 of 3

(EXHIBIT-5), Pleading special matters of fraud.

1 and it has a partial initial of (PM) where the deputy  
2 is supposed to have his name, Brian Mendoza AND  
3 star number. But has some Cursive style star number.  
4 Because of there deception plaintiff took this to  
5 mean (PM) Like Afternoon time. And cursive style  
6 star Number plaintiff thought was the title of Day.

7 While I have been in Jail From 2-12-24  
8 to current the Defence has been sending me: Please  
9 refer to the document I have already sent the court.

10 (2). Motion for a New Trial with Brian Mendoza  
11 #2324 as a defendant in His official And Individual  
12 capacity/with certificate of service of executed  
13 date of April 22, 2024, (EXHIBIT. 1), San  
14 Francisco Field Arrest Card), Fraudulantly Filmed over  
15 Yellow copy to hide certain Facts like Brian Mendoza  
16 #2324 (BM) initials for what he did that day at  
17 work like strip Search plaintiff. In the searches/  
18 SFSD (P&P: strip (x) Box where his Initials should  
19 be but with the Fraudulant Yellow Filmed over copy it  
20 really does look like (PM) Now.

### 21 CONCLUSION

22 This Document: (San Francisco Field Arrest  
23 Card) is the document that I rely on for who  
24 strip searched me. Because who strip searched me  
25 committed the 2 Excessive Force charges.

26 As time has passed I have been in and out of Jail  
27 AND have had to prepare AND Re-prepare documents  
28 because of Fraud. costing me time and Money

1 preparing these documents and adding extra  
2 stress in this case. Thinking the defence was going  
3 to get away with this behavior. It is my  
4 prayer the defence compensate plaintiff for  
5 this fraud.

6 RELIEF

7 (1). The Plaintiff is asking from the defence  
8 in monetary damages \$ 10,000 dollars for  
9 these fraudulent Actions.

10 Date: 4-22-2024

11  
12 Signature of Attorney in Pro-se: Michael Y. L. L. L.  
13  
14  
15  
16  
17  
18  
19  
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21  
22  
23  
24  
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27  
28



CERTIFICATE OF SERVICE

I, Michael Luckert, have mailed in the legal mail system here at: Santa Rita Jail, 5325 Broder Blvd Dublin, CA 94568 the following documents:  
(Pleading Special Matters of Fraud).

Addressed to: UNITED STATES DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA, 1301  
CLAY ST Suite 400s, Oakland, CA 94612

Executed on this Day of: April 22, 2024

Michael Luckert PFN: ULW-491  
5325 Broder Blvd  
Dublin, CA 94568  
Case No. 4-19-cv-08204-PJH

Signature of Attorney in Pro-Se: Michael Luckert

JON RUEL HOLDER I  
510 993 9780  
CLEAR I 4UCG MAIL.COM

UNITED STATES District Court  
Northern District of CALIFORNIA  
SAN FRANCISCO DIVISION

JON RUEL ~~HOLDER I~~  
HOLDER II

< V.

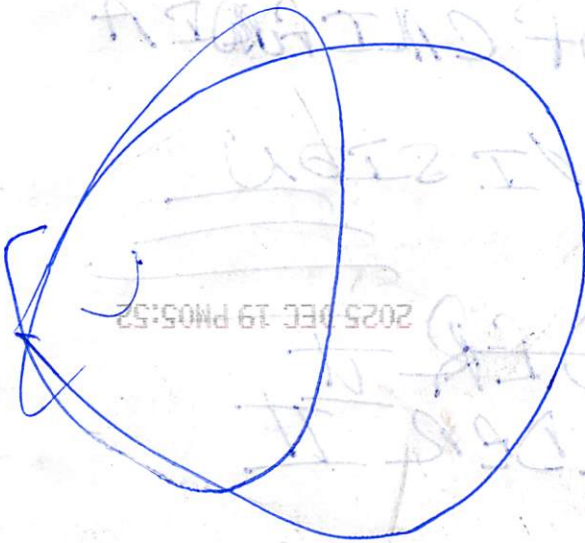
GOLDEN BEAR HOMES LP.  
et al., DEFENDANTS

CASE NO:

SO ORDERED this 9th day of December, 2025.

United States District Judge or Magistrate Judge

*[Handwritten signature]*  
*George J. [unclear]*  
*Magistrate Judge*



2025 DEC 19 PM05:52



(2)

CASE NO. ...  
EMERGENCY Ex PARTE  
MOTION FOR TEMPORARY  
RESTRAINING ORDER

(~~THE~~ Filing Also serves as Plaintiff's  
Com PLINT)

Under FED R. C.V.P. 65 (b)  
Immediate TRO

RECEIVED  
2025 DEC 03 PM 05:38  
CLERK US DISTRICT COURT  
NO. DIST. OF CA.

FACTS

- DISABLED SECTION STENANT  
AT GOLDEN BEAR HOMES (HOMEKEY)
- THEFT OF BENEFIT DURING  
PANDEMIC CONDITIONS  
SENT TO ME FOR MY CARE.
  - RETALIATION for whistle blowing  
ON FRAUD: DENIED ADA ACT

2025 DEC 19 PM05:52

December 9, 2025  
Jon Ruel Holder II

I am a citizen of the United States Of America, living in a tent in Berkeley California. I am living on government assistance. I have a disability am unable to work. I declare under penalty of perjury that the above is true.

AO 240 (Rev. 07/2023)  
APPLICATION TO PROCEED IN FORMA PAUPERIS



3

ACCOMMODATION.

• ABUSE OF MY DOG.

• CRIME AGAINST SOCIETY

BP DCASE#00034528

24-00034520

• ALI R KASHANI

MPI OWNER + BHA

Co-chairman 24 CFR §

982.141.

RECEIVED  
2025 DEC 22 PM 5:35  
CLERK, US DISTRICT COURT  
NO. DIST. OF CA

After I reported fraudulent billing and wrote on my outside window that BACS is stealing taxpayer funds and property management are slumlords this potemkin village needs to be shut down, Akio was clubbed inside my locked room (Berkeley PD Case #24-00034528).

The property manager told me the police came, asked him about the event, he said nothing happened, and the police left without reviewing footage or entering my room.

No one from BACS, MPI Property Management, or Berkeley Police ever entered or examined my room.

BACS Cindy Montalvan diverted my SAGE supplemental payments from my bank account (she had done this before to mess with me); when I went to the BACS office with my Alameda County TRO in effect to ask about eviction help per my contract, a worker handed me 22 pieces of my mail (from CA Civil Rights Dept, US tax returns, bank statements, health insurance, Alameda courts on eviction, postmarked Jan-May 2025); they are still holding or returning my mail, causing me to miss two replacement debit cards from Bank of America and blocking my Verizon order for new service/iPhone (they took payment twice but require 30-day postmarked mail to prove identity, despite my state ID).

The ADA coordinator acted as gatekeeper not forwarding my request for accommodations to the judge, then an Alameda county judge ruling he was in compliance though he was not (Exhibit B – Alameda minute order).

I had a grievance sustained by AC Mental Health Grievance Department, was going to be transferred in 30 days or less, signed consents at their office on Telegraph Ave. Next day on Valentine's Day 2025 I get served eviction papers from "golden bear homes" per St John legal firm. Then I received notice from Mrs King and Darryl Knutson ACMH that my grievance was given to AC Housing and Homeless Department because of my housing. I state wait whoa whoa my mental health overrides my housing they say nope. Was given to Kawal Ulnay. he drug his feet made me go through court refused to contact the court system of Alameda county on my behalf tell judge transfer process in effect, then after judge evicted me came out with a findings report and unsubstantiated my grievance, denied my transfer request rolled my emergency transfer request into the original one i made then closed my housing against my objection and immediate email back to him I want to grieve this report start the process now you cannot close my hud placement I stayed in abusive setting waiting for the system to do the right thing that never did you cannot close my HUD slot. But they have and given me wrong phone numbers and two wrong invalid links to the grievance page. The director is Jonathan Franks ex administration of BACS.

Ari Neulight never told me the program required a disability or that he diagnosed me with mental disability.

Ari referred me to Piedmont Place from People's Park stating it was as close to Berkeley as I was going to get. They keep Berkeley slots tight it's elite area. I deliberately stayed inside Berkeley because I wanted to be housed here special protections and area not Oakland not Richmond not el cerrito. Berkeley had the protections passed for fair housing.

The denial of my mailing address is unconstitutional under the 14th Amendment's equal protection clause and violates inalienable human rights; companies using address as identification of my person is illegal, a discriminatory holdover from English common law property titles that we have progressed beyond to protect human dignity without arbitrary stipulations; this ties to electric power companies and others basing eligibility for services on zip



SON ~~RUTHER~~ HOLDEN

(4)

ORDER Requesting

① IMMEDIATE (H) Room  
IN SF for Safety of my  
Dog AND I

② Keep ALL TENANT Rights  
+ Sub is told saying AND  
RETAINING WITH SAN Police  
At Me in

3 Susan DICK

AND Housing

7 ~~FILED~~

*[Signature]*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
JON RUEL HOLDER II

(jonnyruel)

1620 San Pablo Ave, Room 137

Berkeley, CA 94702

510-993-9780

watchout.goodhappens@gmail.com

Plaintiff pro se

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA,

BAY AREA COMMUNITY SERVICES (BACS),

MPI PROPERTY MANAGEMENT LLC,

GOLDEN BEAR HOMES,

CITY OF BERKELEY,

ALAMEDA COUNTY BEHAVIORAL HEALTH,

PETER RADU,

PAUL BUDDENHAGEN,

BERKELEY CITY COUNCILWOMAN AREA 1 (RASHI KESARWANI),

ALAMEDA COUNTY COURTS,

ALAMEDA COUNTY APS,

ALAMEDA COUNTY HOUSING AND HOMELESS DEPARTMENT,

ALAMEDA COUNTY MENTAL HEALTH DEPARTMENT,

THE OFFICE OF THE GOVERNOR OF THE STATE OF CALIFORNIA,

GAVIN NEWSOM,

THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,

and DOES 1-10,

Defendants.

Case No. [New Filing]

COMPLAINT FOR CIVIL RIGHTS VIOLATIONS, ADA TITLE II, FHA RETALIATION, §1983

(Demand for Jury Trial)

DECLARATION OF JON RUEL HOLDER II (Under Penalty of Perjury)

I, Jon Ruel Holder II, declare:

I was living in a tent on the northwest corner of People's Park (Haste & Telegraph Ave, Berkeley).

A University of California Berkeley social worker moved me.

The moves were: People's Park → City of Berkeley Rodeway Inn → Piedmont Place → Golden Bear Homes.

I am the only person who went directly from Piedmont Place to Golden Bear Homes.

At Golden Bear Homes I was enrolled in the BACS SAGE program (Participant Handbook with my name on page 1 – Exhibit A).

I was in the process of getting service-animal certification for my dog Akio.

2025 DEC 19 PM05:53



UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

Form 6. Representation Statement

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form06instructions.pdf>

**Appellant(s)** (List each party filing the appeal, do not use "et al." or other abbreviations.)

Name(s) of party/parties:

Michael Landon Luckert

Name(s) of counsel (if any):

Attorney in pro-se: Michael Landon  
Luckert

Address: 391 ELLIS STREET, San Francisco, CA 94102

Telephone number(s):

Email(s): michael.luckert@gmail.com

Is counsel registered for Electronic Filing in the 9th Circuit? ☐ Yes ☒ No

**Appellee(s)** (List only the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.)

Name(s) of party/parties:

Mercado # 1982

Name(s) of counsel (if any):

city attorneys of San Francisco  
John H. George.

Address: 1390 Market St, Box Plaza, 7th Floor,  
San Francisco, CA 94102

Telephone number(s): 415 554-3800

Email(s): <http://sfcityattorney.org>

To list additional parties and/or counsel, use next page.

Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)

Continued list of parties and counsel: (attach additional pages as necessary)

Appellants APPELLEES

Name(s) of party/parties:

BRIAN MENDOZA # 2324

Name(s) of counsel (if any):

CITY ATTORNEY'S OFFICE OF SAN FRANCISCO, CA 94102  
JOHN H. GEORGE

Address: 1390 MARKET STREET, FOX PLAZA, 7TH FLOOR, SAN FRANCISCO, CA 94102

Telephone number(s): 415-554-3800

Email(s): http://sfcityattorney.org

Is counsel registered for Electronic Filing in the 9th Circuit? ☒ Yes ☐ No

Appellees

Name(s) of party/parties:

O. SMITH # 12275

Name(s) of counsel (if any):

CITY ATTORNEY'S OFFICE OF SAN FRANCISCO, CA 94102  
JOHN H. GEORGE,

Address: 1390 MARKET STREET, FOX PLAZA, 7TH FLOOR, SAN FRANCISCO, CA 94102

Telephone number(s): 415-554-3800

Email(s): http://sfcityattorney.org

Name(s) of party/parties:

ANTHONY P. OCHOA; Building grounds maintenance,

Name(s) of counsel (if any):

CITY ATTORNEY'S OFFICE OF SAN FRANCISCO, CA 94102  
JOHN H. GEORGE.

Address: 1390 MARKET STREET, FOX PLAZA, 7TH FLOOR, SAN FRANCISCO, CA 94102

Telephone number(s): 415-554-3800

Email(s): http://sfcityattorney.org

Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)

Continued list of parties and counsel: (attach additional pages as necessary)

Appellants Appellees

Name(s) of party/parties:

GUTIERREZ # 1928

Name(s) of counsel (if any):

CITY ATTORNEYS OF SAN FRANCISCO  
John H. George.

Address: 1390 MARKET STREET, FOX PLAZA, 7TH FLOOR  
SAN FRANCISCO, CA 94102

Telephone number(s): 415 - 554 - 3800

Email(s): <http://sf.cityattorney.org>

Is counsel registered for Electronic Filing in the 9th Circuit? ☒ Yes ☐ No

Appellees

Name(s) of party/parties:

LENA #50

Name(s) of counsel (if any):

CITY ATTORNEYS OF SAN  
FRANCISCO / John H. George.

Address: 1390 MARKET STREET, FOX PLAZA, 7TH FLOOR  
SAN FRANCISCO, CA 94102

Telephone number(s): 415 - 554 - 3800

Email(s): <http://sf.cityattorney.org>

Name(s) of party/parties:

GRULE #2005

Name(s) of counsel (if any):

CITY ATTORNEYS OF SAN FRANCISCO  
John H. George.

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Continued list of parties and counsel: (attach additional pages as necessary)

~~Appellants~~ <sup>ML</sup> Appellees

Name(s) of party/parties:

ESPINOZA #1952

Name(s) of counsel (if any):

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Is counsel registered for Electronic Filing in the 9th Circuit? ☐ Yes ☐ No

Appellees

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Name(s) of party/parties:

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CERTIFICATE OF SERVICE

I, Michael Luckert, Certify that I have delivered these documents to the UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA AT 450 GOLDEN GATE AVE San Francisco, CA 94102.

DOCUMENTS SERVED: UNITED STATES COURT OF APPEALS FOR THE NINTH CURCUIT. FORM 6.

Representation Statement Pages 1-4.; UNITED STATES COURT OF APPEALS FOR the NINTH CIRCUIT, MOTION TO APPEAL AS OF Right, Pages 1-13; With EXHIBITS-A — S.

EXECUTED on this Day of December 19, 2025

Michael Landon Luckert  
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I declare under penalty of perjury under the laws of the UNITED STATES that the foregoing is true and correct.

signature of Attorney in Pro-SE:

Michael Luckert

Certificate of Service Executed ON 12-19-2025